

WHY TREATIES MATTER: THE ECONOMIC AND CULTURAL EFFECTS OF
NINETEENTH CENTURY TREATIES IN CHINA, JAPAN, AND KOREA

A Dissertation

Presented to the Faculty of the Graduate School

of Cornell University

In Partial Fulfillment of the Requirements for the Degree of

Doctor of Philosophy

by

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August 2013

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Cornell University 2013

ABSTRACT

Conventional views on state-formation examined within nation political and resource constraints to assess changes that took place. In my dissertation, I explored how external stressors such as international treaties affected domestic legal reforms. By creating a dataset of 235 treaties involving European, Asian, North American, and South American states, I juxtaposed the restructuring process of three Asian countries – China, Japan, and Korea to global trends in trading and diplomacy. I used Chi-square tests of variance to deduce that geographic origins of the treaty partners affected the types of treaties signed and the level of symmetries for treaties. The year of when the treaties were signed also had an effect. Further, treaties tended towards mutual benefits around the early 20th century as cross-regional tensions declined. By the end of the 19th century, treaties specified to form categories such as arbitration, consular, delimitation, and extradition treaties. China, Japan, and Korea's varied turns in the 20th century address how even if external partners approached a nation with asymmetric levels of power, the way in which a nation addressed these provocations mattered. In times of external threats, a nation, restructuring its political and social infrastructures prevented the nation from losing its domestic sovereignty.

BIOGRAPHICAL SKETCH

Jung Mee Park was born in Seoul, South Korea and moved to the United States in 1989. She graduated from Dunwoody High School in Atlanta, GA in 2001, where her favorite class was orchestra with Anne E. Page. At the University of Pennsylvania, she, as a Benjamin Franklin Scholar, double majored in Sociology and History, minored in Music, and earned a certificate in German. She spent the spring semester of 2004 in Berlin as an exchange student at the Freie Universität to study Max Weber and 19th century opera. In May 2005, she earned a bachelor's degree *magna cum laude* with distinction in Sociology and wrote her honors thesis on Korean Christianity. In 2007, she received an M.A. in Quantitative Methods in Social Sciences from Columbia University in New York City and wrote her M.A. thesis on the organizational strategies of musical theatre in the early 20th century.

Since moving to Ithaca, NY in August 2006, she found intellectual, social, professional, and personal treasures. After her thesis defense, she will be a postdoctoral fellow at the Institute for Korean Studies at the University of Southern California.

For Young Hee and Hui Son Park, the greatest parents

ACKNOWLEDGMENTS

Many people have helped me grow as a researcher and person during my time in Ithaca. First and foremost, I thank my advisor David Strang for always keeping his door open.

I would also like to thank my committee members, Mabel Berezin and Katsuya Hirano for their intellectual acumen and personal warmth. I thank Paromita Sanyal for stepping in for my dissertation defense. My fellow graduate students, Chris Cameron, Laura Ford, Annetta Fotopoulos, James Golden, Emily Hoagland, Jennifer Todd, and to many other Cornellians who have made my time in Uris Hall entirely worthwhile.

The help I received from my brilliant undergraduate researchers, Tracy Eisser, Em Xiao, and Brian Bencomo, was instrumental for the completion of this project. Also, I thank Becky Kosick and Eloy Rodriguez La Brada for discussing literature, language, and writing with me. Haim Bar and David Clement's statistical expertise made available to me via the Cornell Statistical Consulting Unit was invaluable. My pre-Ithaca friends, Susan Arotsky, Miriam P. von Essen, Sonali Mishra, Erin Chun, Rachel Gottschalk, and my family – Young Hee, Hui Son, Susan, Yuji, and Kaylee encouraged me for years.

My supervisor and friend, Kris Corda, gave me wonderful reprieve from the dissertation when I needed it. She is greatly responsible for the 8,968 cups of coffee and tea that I have had to finish the thesis. I owe Kris so much for granting me the opportunity to meet Kira Novakofski, Lindsay Waxman, Corey Ptak, and most importantly Everett Schlawin. Besides teaching me how to ride a bike, Everett and I

shared much joyous occasions together. The support from everyone made writing a joy at times. And I will return to Ithaca for many visits.

TABLE OF CONTENTS

CHAPTER 1.....	16
PROJECT OVERVIEW	16
<i>INTRODUCTION</i>	16
<i>Limitations of the study</i>	25
<i>BIG CATEGORIES IN INTERNATIONAL RELATIONS</i>	25
<i>CONSTRUCTIVISM IN INTERNATIONAL RELATIONS</i>	32
<i>WORLD POLITY</i>	35
<i>DIFFERING ORIENTATIONS TO LAW</i>	42
<i>Western Legal Tradition</i>	48
<i>Unequal Treaties</i>	51
<i>Treaty Interpretation</i>	54
<i>SOCIOLOGY OF LAW</i>	62
<i>SOCIOLOGICAL STUDIES OF COLONIALISM</i>	66
<i>CONCLUSION</i>	73
CHAPTER 2.....	74
EMPIRICS OF EMPIRES: STUDY OF REGIONAL DIFFERENCES OVER TIME	74
<i>TREATY SELECTION PROCESS</i>	74
<i>ORGANIZATION OF SELECTED TREATIES</i>	76
<i>DESCRIPTION OF REGION-BASED DYADS</i>	77
<i>YEARS, DECADES, AND PERIODS</i>	78
<i>DESCRIPTIVE STATISTICS</i>	80
<i>HYPOTHESES</i>	81
<i>TYPES OF TREATIES</i>	83
<i>Peace treaties</i>	86
<i>Commerce and navigation treaties</i>	86
<i>Friendship treaties</i>	87
<i>Extradition treaties</i>	88
<i>Arbitrage treaties</i>	89
<i>Treaties of delimitation or annexation</i>	90
<i>Other treaties of interest</i>	92
<i>RESULTS FROM THE ANALYSIS OF KEY PROVISIONS</i>	92
<i>THE ECONOMIC VARIABLES</i>	93
<i>Most-Favored Nation Clauses</i>	93
<i>Clandestine trade</i>	96
<i>THE DIPLOMATIC VARIABLES</i>	98
<i>Diplomatic privileges</i>	98
<i>Consular representation</i>	99
<i>Disaster relief</i>	101
<i>THE CRIMINAL JUSTICE VARIABLES</i>	102
<i>Extraterritoriality</i>	102
<i>THE SOCIAL VARIABLES</i>	106
<i>Foreign Residence and Local Authorities</i>	106

<i>Historical Legacies and Previous Contracts</i>	109
CONCLUSION.....	111
Appendix to Chapter 2.....	114
POSTCOLONIAL LATIN AMERICAN TREATIES.....	114
AFRICAN TREATIES IN THE 19 TH CENTURY.....	119
CHAPTER 3.....	122
CHINA'S TURMOILS WITH UNEQUAL TREATIES	122
REVISITING EUROPEAN CONCEPTS OF STATEHOOD	123
CHINA BEFORE THE 19 TH CENTURY	126
TREATY OF NANKING (1842)	135
TREATY OF TIANJIN (1858)	141
COMMERCIAL TREATY FOR MARITIME AND OVERLAND TRADE (1882)	145
TWENTY FOUR RULES FOR THE TRAFFIC ON THE FRONTIER (1883)	149
TAIPING AND BOXER REBELLIONS.....	155
CONCLUSION.....	156
CHAPTER 4.....	158
JAPAN: THE MODERNIZING LEGAL FORCE.....	158
TREATY OF KANAGAWA (1854)	165
TREATY OF SHIMODA (1855).....	168
ANSEI TREATIES (1858).....	170
TREATY OF SHIMONOSEKI (1895).....	178
TREATY OF PORTSMOUTH (1905).....	182
CONCLUSION.....	186
CHAPTER 5.....	189
VARIETIES OF IMPERIALISMS IN KOREA	189
<i>Historical assessment of 19th century Korea</i>	190
<i>Historical Background of Korea</i>	192
<i>Early Nativism in Korea: Tonghak Rebellion</i>	197
TREATY OF GANGHWA (1876)	200
Content of the Treaty	211
How the Koreans appraised China	221
TREATY OF FRIENDSHIP WITH GERMANY (1883)	224
Kapshin Coup (1884).....	229
Gabo Reforms (1894)	232
PROTECTORATE (1905) AND ANNEXATION (1910) TREATIES	239
CONCLUSION.....	248
CHAPTER 6.....	250
BILATERAL TREATIES IN A CONTEMPORARY CONTEXT	250
BILATERAL TREATIES IN THE MODERN CONTEXT	253
APPENDIX	258
TREATY CODEBOOK 2013.....	258
REFERENCES	264

LIST OF FIGURES

Figure 1.	Key Ports of China, Japan, and Korea	15
Figure 2.	Line Graph Chart of Treaties Signed	79
Figure 3.	Mosaic Plot of Contingency Analysis of Region by Type of Treaty	84
Figure 4.	Mosaic Plot of Contingency Analysis of Type of Treaty by Binned Decades	91
Figure 5.	Histogram of Opium Trade	97
Figure 6.	Map of Spanish America, circa 1650	117

LIST OF TABLES

Table 1. Distribution of Treaties by Region-based Dyad	78
Table 2. Distribution of Treaties for Binned Decades	79
Table 3. Distribution of Treaties by Type	83
Table 4. Contingency Analysis of Region by Type of Treaty	84
Table 5. Logistic Fit of Type of Treaty By Year	90
Table 6. Contingency Analysis of Type of Treaty by Binned Decades	91
Table 7. Symmetry of Significant Treaty Variables	93
Table 8. Opium Trade	97
Table 9. Extraterritorial Jurisdiction	103
Table 10. For Foreign Residence and Local Authority	107
Table 11. Historical Legacy and Previous Contracts	109
Table 12. Differentiated Colonial Phases in Spanish Latin America	116
Table 13. Distribution of Chinese Treaties by binned decades	132
Table 14. Distribution of Chinese Treaties by Type	132
Table 15. 1882 Regulations for Maritime and Overland Trade	146
Table 16. 24 Rules for Frontier Trade of 1883	151
Table 17. General Distribution of Japanese Treaties by Decades	165
Table 18. Distribution of Japanese Treaties by Type	165
Table 19. Japan's objectives for Colonization by Nitobe	185
Table 20. Treaty centered timeline of Korea	189
Table 21. Distribution of Korean Treaties by Region-based Dyad	200

Table 22. Distribution of Korean Treaties by Binned Decades	200
Table 23. Distribution of Korean Treaties by Type	200
Table 24. Treaty of Ganghwa of 1876	201
Table 25. Supplemental Treaty of Ganghwa of 1876	207
Table 26. 1882 Treaty of Amity and Commerce Summary	208
Table 27. Distribution of net commodity product by industrial origin	241
Table 28. Involvement in Korea	247

LIST OF ABBREVIATIONS

ETJ	Extraterritorial Jurisdiction
MC	<i>Maritime Customs</i>
MFN	Most Favored Nation Clause

PREFACE

Treaties as Literature

Techniques for textual analysis in literature apply to qualitative analysis of legal texts. Quantitative and qualitative analysis of treaties inform scholars of the laws' impact. The qualitative assessment of the treaties examined the syntagmatic, which are the surface structures in the treaties. The parts within the treaties are paratactic structures such as interchangeable sentences. The paratactic axes as it pertains to the syntagmatic structure of the text evolved to where treaties from disparate parts of the world mirrored other treaties involving wholly different sets of nation-states.

Writing about nation-states at the macro level poses additional challenges. When I stepped outside the text to analyze the implications of the treaty (the exegesis), I used nations and occasionally individual diplomats as grammatical subjects. As Nietzsche noted in the *Genealogy of Morals*, the problem of subject led writers to appropriate roles to a subject when it is more often complex interpolated entities that yielded such results. The grammatical subject is a "little changeling" (Nietzsche [1887] 1956). I often use nations as subjects when in fact a group of elite men frequently demanded the outcome treaty negotiations and other events. The countries themselves became actors as did clauses, legal enactments, and individual persons. The readers shall excuse the shorthand I used for the grammatical subject throughout the thesis.

Figure 1. KEY PORTS OF CHINA, JAPAN, AND KOREA

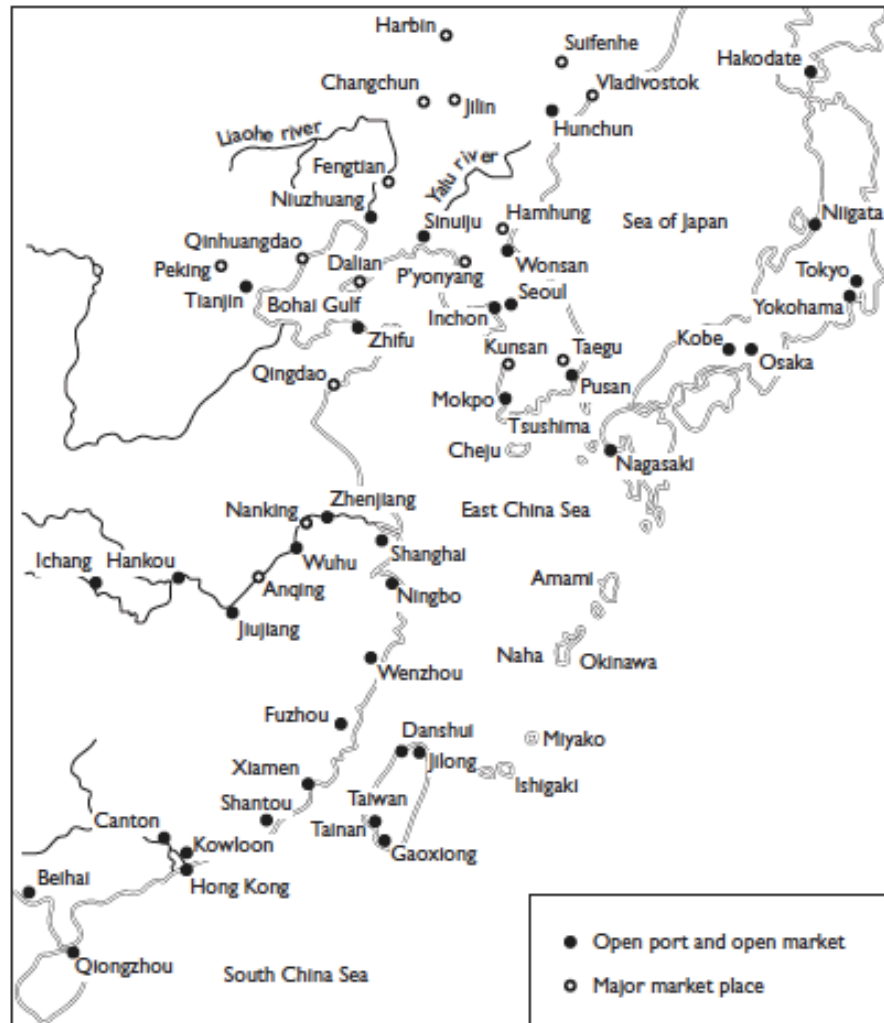


Figure 1.3 Treaty ports and opened cities in East Asia in the 1880s

Source: Takeshi Hamashita, "Tribute and Treaties: East Asian Treaty Ports Network in the Era of Negotiation, 1834–94," *European Journal of East Asian Studies* (Brill, Leiden, Boston, Köln, 2001), Volume 1.1: 62.

CHAPTER 1

PROJECT OVERVIEW

Introduction

In my dissertation, I examine how Euro-centric conceptions of statehood and international law became a dominant set of practices for conducting inter-state relations. To capture how international legal practices were established, I study an aggregate of 19th century bilateral treaties from Asia, Europe, and Latin America. Treaties chronicled the encounters of two or more nationally based legal institutions during times of conflict and cooperation. Unlike Asian interstate relations, which was based on hierarchies, the a priori notion of “Western” style treaties was that nations, prior to engaging in treaty relations, were independent and sovereign. Legally, treaties performed both contractual and legislative roles. Legal scholars and government officials conceived treaties as contracts between two or more sovereign nations. Upon ratification, provisions in the treaties required countries to accommodate inter-state relations within the domestic legislative spheres. Through the proliferation of treaties, the norms and conditions for diplomacy, commerce, and criminal justice became more standardized.

The dissertation examines the impact of 19th treaties in two ways. First, I examine at the macro-level how western legal traditions evolved as the dominant form of legal organization globally in the 19th century. By examining 235 treaties from various regions, I evaluate patterns for international relations that emerged throughout the century. Second, I focus on Asia’s transition from the suzerain state system to the international system and how legal transactions allowed Japan to colonize Korea. Korea was recognized as a sovereign state for a decade before Japan officially annexed it in

1910. Japan's colonization of Korea occurred through treaties that extracted economic resources from Korea. Economic goals accelerated the inter-state relations and encouraged multiple nation-states to contact Asian states in the 19th century.

Six chapters comprise the dissertation. The first chapter discusses why treaties provide insight for socio-political transformations, international relations, sovereignty, and legal history. I provide historical background for the treaty systems of the 19th century. I describe the dataset I constructed using 235 treaties signed from 1783 to 1912. The earliest treaty included in the dataset is the Paris Peace Treaty, which ended the American Revolutionary War, from 1783. The last treaty in the dataset is the Whangpoo Conservancy Administration Agreement, a multilateral treaty between China and 11 Western nations of 1912. The treaties involving Asian, European, North American, and South American nations were of historical significance and also pedestrian transactions. The offices of the foreign secretary published treaties in these special volumes. From there, I strove for a representative sample of treaties signed during the 19th century.

Data Collection

By constructing a dataset of 235 treaties that were mostly concluded in the 19th century between sovereign nations, the dissertation discusses the trends in international agreements. The treaties comprised seven major categories – peace, extradition, navigation, commerce, and friendship, commerce, extradition, and others. Bilateral treaties, as openly accessible source of data, provide the main source of evidence for the dissertation because treaties highlighted activity of international relations. Treaties captured much of the context and content of international relations.

I assembled a nearly exhaustive sample of treaties between Asian and European nations from the 19th century. The treaties between European and postcolonial Latin

American states countered the treaties between European and Asian nations. The content of the treaties are tabulated for mainly symmetric versus asymmetric results. Each treaty had information for about 10 to 30 provisions out of 64 that I categorized. I focused on 29 key provisions, which included key features of the 19th century treaties such as the most favored nation clause, extraterritorial jurisdiction, arbitration, extradition, arms sales, opium regulations, religious freedoms, and consular representation. The range of provisions captured the variability in economic, diplomatic, and political emphases of the treaties.

Chapter Summaries of the Dissertation

Also in chapter 1's literature review section, I discuss my theoretical orientation at the macro-level. International relations scholars often examined problems at the state-level. Likewise, I include state-level implications of international treaties with an emphasis on treaties' effects on domestic politics. I outline realist, liberalist, and constructivist perspectives of international relations and evaluate how the models fit in with 19th century sovereignty norms. Sociological literature explored the theoretical praxis of economically weaker states interacting with stronger states via the world systems theory (Wallerstein 1984), how certain models for treaty writing are exported via the world society model (Meyer et al. 1997), and how an outsider orients him or herself in a foreign culture via colonial theory (Steinmetz 2008). Legal scholarship also discussed why agreement does not guarantee compliance (Hathaway 2005). Texts on law and imperialism, comparative state analysis, organizational learning, international relations, and historical accounts of East Asian societies defined the processes for coming to terms with Euro-centric definitions for sovereignty, independence, and autonomy.

In the second chapter, I analyze key diplomatic, political, economic, and social trends of 19th century bilateral treaties. Descriptive statistics of the treaties such as year, types of treaties, and number of articles in the treaties are also summarized. I define legal and economic terms that the treaties featured. The most favored nation clause, extraterritorial jurisdiction, extradition, and delimitation become relevant terms for discussion in the quantitative and qualitative portions of the thesis.

Economic disparities were not the sole determinants for inequality in the world system. Biases based on regional differences caused buffers in business transactions during the 19th century. Unlike contemporary theories of regionalism (Clark and Beckfield 2009, Zhou 2011, 2013), tensions involving sovereignty and territoriality in Asia and Latin America made within region trade agreements skewed and asymmetric, where one party benefits more from the transaction than the other. Despite Asian and Latin American nations' similar standing among Europeans, Europeans treaties with Latin American states provided more reciprocal and symmetric outcomes for the most favored nation clause, extraterritorial jurisdiction, consular representation, and diplomatic privileges. Though the European cultural seeds planted in South America occurred via harsh colonization, all of the elites in postcolonial Latin American states considered themselves European and maintained cultural allegiances to Europe through akin religious, artistic, and scholarly pursuits.

On the other hand, Asians were relatively unknown to Europeans, and most known accounts of Asia were replications and retellings of exotic travel logs that were often fictitious to begin with (Said 1978). Unfamiliarity rendered more asymmetric treaties between Asian and European countries. The Asian and European pairing had less

reciprocal outcomes in the most favored nation clauses (65%) and consular representation (78%) than treaties between Latin American and European countries, which were all reciprocal for both provisions. The treaties between Asian and European nations benefited Europeans more.

Several key features of the treaty emerged from the treaties. The most favored nation clause, an arrangement that mainly helped European states establish improve trading terms without arduous renegotiation subsided during the early 20th century. As for consular representation, treaties after 1901 mentioned the clause less frequently. From 1861 through 1900, treaties established for both sides to send diplomats or special agents to handle specific tasks. From 1881 to 1900, treaties mutually allowed local authorities to protect citizens from the other's nation who may be residing within their jurisdiction. Other issues such as opium was mentioned sparingly. Only 12 out of 235 treaties banned the trade of certain goods such as opium or ginseng. In one case from 1869, opium trade was sanctioned between Austria-Hungary and China after Austro-Hungary paid a tariff. Important trends based on region and years accentuated the challenges that Asian nations faced while facing a new set of legal norms.

In chapter three, I discuss the historical significance of treaties that China signed during the 19th century. China's experience affected how other Asian nation-states interacted with European states. Using primary and secondary histories of China, I describe tributary state relations, government, and commerce in Asia before treaty relations with Western nations. After China signed the Treaty of Nanking with Great Britain in 1842 after the Opium War, the Chinese empire was furthered weakened as a result. The decline of China from prominence to disarray occurred over several decades.

By the 1930's, districts in China were under German, British, and Japanese rule and Chinese rulers' central authority weakened.

In the fourth chapter, I discuss Japan's signing of the Treaty of Kanagawa with the United States in 1854. Japan went onto sign Ansei treaties of (1858) with the Netherlands, Great Britain, and Russia thereafter. The early "unequal" treaties encouraged the Japanese government to revamp from feudalism under the Tokugawa Shogunate to a monarchy by reinstating the emperor in 1868. Concurrently, the adoption of Western clothing, providing compulsory education, abolishing social classes, and relinquishing superstitious "Evil customs of the past" ensued (deBary et al. 2005, 137). By the 1870s, Japan emerged as an economic and military force in Asia.

In 1905, shortly before the Treaty of Portsmouth (1905) that ended the Russo-Japanese war, the Japanese government held secret meetings with the United States to assure non-interference from the U.S. regarding Japan's imperial interests. Western nations noticed Japan's increasing military might. In 1910, Japan annexed Korea without Western dissent. Economically, Japan continued to grow. By 1930, Japan's involvement spanned from Manchuria to the eastern coast of China (Duus 1989, 5). The Japanese strategically purchased factories and imposed export restrictions to influence China's foreign affairs. The Chinese and Japanese cases highlighted how colonialism was not necessarily a European impetus. The conventional dichotomy of colonialism as a "White" versus "Other" distinction appeared unnecessary because similar levels of contention among geographically neighboring states also existed.

Korea's Treaty Relations

In the fifth chapter, I outline Korea's historical intermingling where multiple imperial powers vied for control during the 19th century. So to extend Skocpol's (1979)

and Goldstone's (1991) theories on state breakdowns that recognized in part the robustness of external forces, the Korean case supposed ways in which external forces were multidimensional. Although treaties promoted sovereign equality among nations, some nations such as Korea suffered to lose its sovereignty. Korea as a geographically advantageous location in Asia, multiple imperial interests from China, Japan, and the United States implemented laws differently to influence Korea.

Korea had close ties with the Chinese. From the late 17th to 19th century, Qing-ruled China was Asia's economic, political, and intellectual center. In 1637, Korea, named Choson at this time, entered tributary relations with China's Qing rulers (Larsen 2008). In the 19th century, the Korean state was less stable than the Chinese state. King Kojong of Korea who had begun his reign in 1863 as a young child turned the control over to Daewongun, the regent. Daewongun, a strict isolationist, limited contact with all foreign states, including China.

Korean elites who opposed the break from China informed the Qing government of the military uprising against the government in Korea when Korea was recognized as an independent nation. Chinese troops entered Korea to quell the Imo Mutiny of Korean soldiers in 1882. From 1882 to 1885, the Chinese government was the imperial power in Korea. The treaties signed at this time including the Overland and Maritime Trade Treaty in 1882 and another commercial treaty in 1883 between China and Korea reflected the tensions that Korea experienced after abandoning its traditional tributary relations to China. A faction of the Korean aristocracy valued their formal ties with China. In the Sino-Korean treaties, the texts alluded to the centuries of trade relations between the two nations where China set the rules.

Japan viewed Korea as an independent nation as opposed to an extension of the Chinese empire. Japan found Korea approachable. In 1875, Japanese naval vessel named Unyo advanced to Korea and a skirmish ensued. The Koreans signed its first Western style treaty a year later. The Treaty of Kanghwa (1876) with Japan signaled to the “family of nations” that Korea was an autonomous and sovereign state. Soon after, elites of the progressive Enlightenment party promoted Korea’s alliance with Japan. Korea’s Enlightenment Party led a violent coup in 1884 that resulted in several assassinations. And mayhem ensued. In over a few decades, Korean elites relinquished Confucian orthodoxy, accepted tenuous sovereignty, and developed radical perspectives to combat external influences.

In Asia and beyond, borders, military strongholds, and economic resources exchanged hands globally in the 19th century. Treaties affected changes in Asia’s geopolitical networks (Collins 1995). The shift in geopolitics features the downfall of China and the rise of Japan. As Japan gained dominance in Asia, Japan began to export and import large volumes of goods in and out of China. Through treaties, Japan eventually colonized Korea and 26 other territories in the Pacific. Japan’s economic insurgence as well as military prowess aided its expansion. The Euro-centric “family of nations” extended to include Japan by the early 20th century as a member (Gong 1984).

Another imperial interest in Korea appeared from the West. In the midst of Chinese and Japanese factions forming within Korea, the United States entered Korea with cultural and economic motives. In 1882 the United States concluded the Treaty of Amity and Commerce with Korea, which allowed among other opportunities, the settlement of Christian missionaries. In his letters, American naval officer, George

Foulk, detailed the gruesome accounts of imprisonment and torture that transpired after the 1884 coup attempt in Korea. Foulk befriended aristocratic Koreans and conversed with several Koreans who later studied in the United States. Korean Christians allied themselves with Americans. The U.S.-Korean treaty yielded more reciprocal rights than Korea's treaties with the Japanese or Chinese around the 1880s. Korea's displacement from sovereignty to dependency portrays the significance of legal status in international relations.

The sixth chapter of the dissertation summarizes the effects of bilateral treaties in Latin America and Africa. Further, I discuss how the project ties in with contemporary studies on regional blocks in global trade (Clark and Beckfield 2009, Zhou 2011, Zhou and Park 2012). Bilateral relations grew towards multilateral and region-based blocks of trade interests. Treaties in the 21st century are criticized for their lack of overarching enforcement mechanisms beyond the sovereign states that wrote them. The current inefficacy in international law could be the result of 19th century law's paternalistic and overbearing measures of enforcement. In the past, bilateral and multilateral treaties implied that representatives from one party were present in the other's country to enforce the conditions of the treaty. To establish a mechanism in the modern legal climate where issues of human rights, environmental and sustainability issues, and financial markets need stronger checks, an examination of laws in the time of imperialism relay why law had been enforced differently then.

Treaties across regions provided the evidence for the norm setting for international relations via the rule of law. By examining the contours of international relations between and among European, North American, South American, and Asian

states in the 19th century, patterns for the types of bilateral agreements emerged. The themes that materialized out of the treaties were predominantly economic with key diplomatic and cultural stipulations.

Limitations of the study

Though the dataset did not include observations on every 19th century treaty, about 235 treaties written in German, French, Spanish, English, and Korean were in the sample. The focal region for the dissertation was East Asia. Therefore, 19th century treaties involving China, Japan, and Korea are extensively covered. To compare European treaties with Asians, I included key treaties signed between Western nations and postcolonial Latin American states. Additionally, treaties among Asian, North American, and South American nations are included in the analyses. Treaties that involved African states were not in the dataset. However, I discuss Christine Agwabu's (1995) careful analysis of African treaties in chapter 6.

Big Categories in International Relations

Paramount to the study of international relations (IR) is the concept of sovereignty. In the *Gentle Civilizer of Nations*, sovereignty comes as a gift to non-western reaches of the world. The origins of sovereignty trace back to the Peace at Westphalia in 1648. However the notion of the sovereign existed back in the 13th and 14th centuries (Meron 1995). In effect Westphalia synthesized several earlier treaties of Osnabrück and Münster using the principle of *cuius region, eius religio* that as a principle of the state system appeared in the Treaty of Ausburg in 1555 (Aalberts 2012, 11). The earlier organization of political bodies was domains existed under the same Christian laws. The Treaty of Ausburg confirmed the secular component of ruling bodies without

external interference. Still, Westphalia exemplifies the triumph of skillful diplomacy. The category of sovereign statehood was more alleged than emphasized.

The Westphalian version of sovereignty had two dimensions. The first dimension is internal and reflects a government's authority over a given territory. The second dimension is external and implies that there is no overarching authority that guides interstate commerce. The process is compared to a Janus faced traditional realist IR, where one side is a beautiful and orderly face while the other side shows anarchy (Aalberts 2012, 14). Westphalia helped for nations to develop a legal personality that is considered the cornerstone of international law and also provide a basis for realist reasoning in IR. State centered theories fail to be useful when states have domestically contested issues and weak internal sovereignty (Lake 2008).

Realists emphasize autonomy of nation-states and counter the notion with an anarchic system. In terms of states interacting with and reacting to one another, theories in IR grossly simplified into realism and constructivism perceive the role of the state differently. Constructivism is closely aligned with institutionalism and shares a norm-based construction of reality. As Strang (1991) noted, the realist and institutional perspectives offer different explanations for the expansion of colonies. The "cultural constitution" of Western states that created "mutual recognition" was an institutional argument for how states chose to colonize certain polities versus others (Strang 1991, 162). The realist explanation would view that non-European polities bore little effect on the balance of power within Europe and that Europeans competed with one another to gain territories.

Realism

In a skeletal view, the realist approach is state-centered and associated with the maintenance of the balance of power. As Wolforth (2008 Oxford handbook) noted, the four central propositions of realism are 1) groupism, 2) egoism, 3) anarchy, and 4) power politics (133). States, in the realist model are rational self-interested actors endowed with “power capabilities” (Strang 1991, 145). In theory, stability among nations is possible if each state holds equal power compared to the other states (Strang 1991, 146). The hegemonic stability theory acknowledged that powerful states influence the international system (Wolforth 2008, 142). The power transition theory, as a subset of the hegemonic stability theory, which is attributed Organski, examines the cyclical relationship to war and the changing power figures for the international system. States take a different share of power in the international system and states rarely act on their own accord because it may destabilize the balance of power. Realists emphasize autonomy of nation-states and counter the notion with an anarchic system.

Realism comes in many forms. Classical realism associated with E.H. Carr, Hans Morgenthau, and Raymond Aron, work with concepts built on power. Kenneth Waltz and Robert Gilpin represented neorealism. Mearsheimer considered offensive realism an offshoot of Waltz’s neorealism (Wolforth 2008, 139). Defensive realists such as Van Evera (1999) and Taliaferro (2000) theorized that the rise of group identity through nationalism make it more difficult to conquer or subjugate other groups.

Sovereignty as the property of states exists prior to the international system and society according to Waltz, Wendt, Ashley, and other realists. However, governance in the 17th century as it is now required a multilevel approach. It was misleading to assume horizontal sovereignty where all states are equal to another even in the plainly legal

sense. The terms of the bilateral treaties examined in the dissertation highlight how sovereignty was a complex and contested issue. The complexities arose from economic, territorial, and cultural distances.

Materialism

The materialists include realists of international relations and the hegemonic/world systems theorists of sociology (Go 2008). Julian Go reviews the materialist perspective of colonialism as partial influences of the realist school of international relations that Morgenthau and Walt typifies and the sociological tradition of hegemonic power and world systems theories that Marx and Wallerstein typifies. The realists would place more value on material facts such as economic and military resources. In Morgenthau's classical view (1978), countries with resources will continually expand (Go 2008, 204). Realism diverges into two forms -- "offensive" and "defensive" realisms, where the offensive strategy shows that those with resources will expand. The defensive school predicts that those constrained for resources will have to expand. Either way, states are conceptualized as self-maximizing individualistic actors.

Self-interest may be primal, however, the acceptance and acknowledgement from other members of the international system are paramount. Furthermore, the membership into the international society becomes a necessary investment for peripheral nation-states of 15th through 20th centuries. Therefore different permutations of realism justify how certain forms of power predominate over time.

Institutionalism

The two main subsets of the neoliberal institutionalism are social constructivism and English School (Stein 2008, 207). Social constructivism relies on the formation of the international society based on interaction while the English School posits the

existence of an international society based on rules and norms. Constructivists feature international law as a major institution. Laws' focus on private and public goods broadens the reach of institutions in international relations (Stein 2008, 214). Historical institutionalism fits in with my goals to track the historical changes in legal and governing organizations internationally.

Sovereignty *ipso facto* is an institution based on agreed upon definitions for a state. In Tanja Aalberts's *Constructing Sovereignty between Politics and Law* (2012), the author parses the argument into the origins of sovereignty, the institution of sovereignty, its identity, linguistic turn, and subjective use of the term. The types of sovereignty that Aalberts identifies remain more as perspectives for studying sovereignty. Stephen Krasner's approach examined the term sovereignty embodied contradictory assertions presenting itself under the veneer of organized hypocrisy. Krasner identified two kinds of sovereignty, Westphalian and international legal. Westphalian model represented the nation-state's autonomous right to rule without outside interference. International legal represents how exclusion is not complete since "mutual recognition of territorial entities" is first and foremost to sovereign status (Aalberts 2012, 37). Furthermore, international legal sovereignty developed into interdependence sovereignty that refers to cross-border controls. Westphalian sovereignty developed into domestic sovereignty. Jackson's positive and negative sovereignty referred to rights of authority and capabilities for control after nations are recognized as sovereign states.

Aalberts criticizes Krasner's definition of sovereignty as being inflexible because it focused on material factors instead of norms and on behavior (2012, 38). Krasner emphasized the material factors because sovereignty norms are often violated. In March

and Olsen's groupings, the logic of consequence remains more important than the logic of appropriateness (Aalberts 2012, 39). Sovereignty, according to Aalberts, remains the domain of politics and law so it required a multidimensional approach that should examine how it has managed to evolve over centuries.

In essence, sovereignty is an abstract notion that as Berger and Luckman ([1966] 1989) noted has gone through a process of reification. As Douglas North noted, institution has formal rules such as laws and informal rules such as norms (Aalberts 2012, 44). As it lies, sovereignty is an institution because it is an abstract concept that conveys meaning for practitioners of international law.

The English School

The English School within IR emphasized an approach of viewing nation-states as being a part of a cooperative international society. Hedley Bull's *The Anarchical Society* (1977) made the study of sovereignty as an interdisciplinary issue. Bull tied politics with international law. Necessarily, sociology, history, and ethnic studies also contribute to the discussion of sovereignty today. Bull conceives sovereignty as a result of statehood. Sovereignty is a right, issued through 1) claims, 2) recognition, and 3) order (Aalberts 2012, 50). The English School is a juxtaposition of the neo-realist view where nation states compete for power and strive to survive in a disorderly anarchic system. For scholars of the English School, rules, norms, and values are reified through discourse and the international system is kept healthy thusly. The perspective of sovereignty as a form of membership prevents the system from becoming completely anarchic. The norms refer to the standard of conduct or later the standard of civilization.

Interstate discourse is necessary for to create normative solidarism, which in turn may examine Westphalian sovereignty as almost a "straitjacket" (Buzan 2004, 8). The

English School's vision of the international society is not necessarily fully harmonious. It can be understood as an effort among nation-states to "agree to disagree" and maintain mostly practical ties with one another (Aalberts 2012, 50). Society helps institutions maintain common goals that signal the existence of an international society (Bull 1977).

The English School's answer to why there is cohesion in an international system that lacks an overarching governing system is "some enlightened form of interest that entails a normative element" (Aalberts 2012, 52). The international society envisioned by the English School is akin to the establishment of customary law. The two elements of customary law are (1) a settled practice and (2) *opinio iuris sive necessitatis* or the sense of legal obligation (ibid). Sovereignty is a regulative principle. Sovereignty is not a given rule of states it is the mere "rules for coexistence" (Bull [1977] 1995, 35).

Why institutions matter is aligned with what actors may gain via the rules. Rational choice theory guides neoliberal institutional scholars such as Keohane and Ikenberry (Richardson 2008). Ikenberry (2001) claimed that historical trends illustrated how "Power is exercised through rules and institutions," where the hegemon's power is approachable (Richardson 2008, 225). Global organizations such as the North Atlantic Treaty Organization, the World Trade Organization, and the Asia-Pacific Economic Cooperation are elements of the spread of institutionalism that show how agreements concern multiple nations at once.

Institutional analysis examines more than the instance of whether physical organizations exist or not. The intangible aspects of institutions rely on norms and meanings. The cultural framework of the institutional approach reflected Oran Young's sentiments for "easily identifiable rules." The rules would be affiliated with certain

conventions (Strang 1991, 147). Sovereignty embraced the notion of recognition that linked and connected nation-states with one another (Strang 1991, 148). Therefore unrecognized polities suffer from high levels of instability before other nations properly warrant the status of statehood. Institutional approaches enlivened the world polity or the world society model of charted globalization through ideas.

Constructivism in International Relations

The core attribute of constructivism was the “international reality is socially constructed” (Hurd 2008, 305). As Ian Hurd (2008) described constructivism, the four distinguishing features of constructivism were 1) to oppose materialism of the neorealist and neoliberal traditions. Constructivists also 2) construed state interests systematically from both liberal (Moravcsik 1999) and realist (Krasner 1999) perspectives (Hurd 2008, 303). 3) The mutual constitution of structures and agents represented the institutions and actors in the context. 4) The multiple logics of anarchy included a logic that the international system may not be anarchic.

The vast sociological literature on states, state formation, and international institutions mostly incorporates aspects of culture, which was less frequently incorporated in International Relations’ (IR) theories on statecraft. Constructivism in IR highlighted norms and cultural categories to explain the impacts of economic and military power differentials. Constructivists in international relations continued to discuss power even while discussing norm structuration. Law carried power because it was able to structure a person’s perceptions in terms of framing how a person comprehended knowledge. Additionally, laws extend to enforcement and punishment.

Constructivism in international relations infused cultural explanations the ties that form globally. The philosophical foundations of constructivism according Adler came

from the belief that what we accepted as a material reality was based on perceptions (Berger and Luckmann 1966). Constructivism as used in IR contains at least three layers – the metaphysical stance, social theory, and theoretical and empirical perspective. The metaphysical stance asks what we can know about the social world. The social context and the role of intersubjectivity affect international affairs (Adler 2002, 96). In an empirical and theoretical perspective, the role of identities, norms, and institutions appear more relevant.

Sovereignty within Constructivism

Alexander Wendt, a social constructivist, stated that the four legitimating aspects of sovereignty were role identity, collective identity, type identity, and corporate identity. Role identity speaks to the recognition process needed to become a sovereign state in the international system. Collective identity comes as a part of a states' recognition of themselves as a part of the international system. The type identity refers to how social phenomenon, even if not new, attain new meaning once a term for it is generated. Corporate identity forms from similar yet distinct actors that combine as interlocking parts in a greater system. Wendt goes on to list five features of a state as “an institutional-legal order; a monopoly on the legitimate use of force; sovereignty; society; and territory” (Wendt 1999, 202, Aalberts 2012, 76). At least legally, sovereignty has the flavor of equality. Dating back to the Montevideo Convention of 1933, the definition of statehood required the possession of a permanent population, defined sovereignty, defined territory, government, and “capacity to enter into relations with other states” (1933).

As Westlake had noted in *The Principles of International Law* (1894), a recognizable form of government protected territories from being colonized. As

Koskenniemi notes, the facts of the social world are not automatically present (Aalberts 2012, 81). In the first half of the 19th century, legal scholars such as von Martens, Klueber, and Kaltenborn agreed that European states were divided into sovereign nation states, so the effort to establish laws governing over the sovereign nations seemed futile. Hautefeuille insisted that international law had “divine and primitive” origins that further suggested that it would be impossible to have a set of guidelines to regulate “all people of the universe” (Hautefeuille in Koskenniemi 2002, 30). In agreement with these concepts, Hobson noted that nationalism leads to internationalism (1938, 11).

Connections to Historical Sociology

The logical connections between international relations to historical sociology connect pieces from each discipline to the other. Hobden and Hobson (2002) challenged sociologists’ use of international relations theories for being based on chronofetishism which posited that the present can be understood by only examining the present circumstances (Hobson 2002, 6). They also criticized tempocentricism, which examined the past through the lens of the present (Hobson 2002, 9). Sociologists and constructivists often share a norm-based approach.

As Michael Barnett noted, the constructivists needed to develop theories that connected the state to the society, examined political economies, and assessed the autonomy and importance of international organizations (Hobson 2002, 26). A. Claire Culter emphasized law from the critical theory perspective. She argued that the study of international law in international relations had been ahistorical since the primary assumption was that law was an instrument for the state. In fact, law was part positive, built up of somewhat arbitrary but standardized rules, and customary, built up from local customs and practices. Historically assessing the development of international law

removed the chronofetishism that Hobson faults with current interdisciplinary work between international relations and law.

Constructivism does not clearly define the studies' unit of analysis as the state or any other entity. With constructivism, international relations scholars lost the thread of positivism and scientific claims for significance that IR scholars attributed to their theories. The scientific positivism that generations have upheld had been socially constructed as well (Knorr-Cetina 1981). Therefore, the world of ideas and beliefs weighed the evaluation process. As a more sociological approach in IR, constructivism connected to the world society model (Kratochwil 2008, 446). As the founder of the Stanford School, John Meyer proposed the detailed impact of Western institutions such as law and commercial interests that extended Western concepts as legitimate modes of governance, education, and public policy.

World Polity

A macro-level approach is applicable for the project. The globalizing theoretical orientation of World Society also known as the world polity model as John Meyer proposed, added traction to the discussion of law in international politics. Meyer et al. (1997) analyzed the nation-state as an institutional form that diffused. Based on the Western liberal and democratic model, the features of the nation-state such as a national constitution, democratic elections, and compulsory elementary education, the authors argued spread since World War II (Meyer et al. 1997, 148).

Sovereignty within World Polity Model

As a legal institution, sovereignty is set up through documents such as the national constitution that sets the foundation. The constitution spread as a global process (Ramirez and Boli 1987) and represents a national sentiment (Norton 1993).

Sovereignty as a social construction still requires the audience and states that are able to recognize other nations. Hence, “middle ground constructivism” mediates the positions of rationalists and reflectivists (Adler 1997). Rationalists accept the existence of states and examine the role of the state separate from their values. Reflectivists question the processes that constructed the knowledge base and entertain notions of subjectivity into the process. But cultural phenomena are just as objective as material resources since they are all inclusive in the “real world” (Wendt 1999, Aalberts 2012, 72).

Meyer et al.’s institutional perspective added to three established approaches. The microrealist analysis, which is a part of international relations, macrorealist arguments from the world systems theory and state competition theory, and microphenomenological approach informed the authors’ approach to the nation-state and cultural transpositions. The microrealist view premised the existence of the nation-state in an anarchic system. Nation-states were rational actors that had local or national cultures (Meyer et al. 1997, 146). From the macrorealist view, the state reacted to external economic, military, or political pressures instead of acting in accordance to national values. Here culture held the position of hegemonic ideology. The microphenomenological approach prefaced the importance of culture but casted culture as a local or national level effect. Unlike previous approaches, the world society model developed avenues for understanding patterns as a form of diffusion that operated at the nation-state level. World society responded to the state level analyses of the realist school in international relations.

Distinctively, the world society approach constructed the nation-state as actors that constantly reified themselves based on cultural markers such as citizenship rights,

socioeconomic development, and criminal procedures (Meyer et al. 1997, 148). Though the authors did not define culture forthrightly, the implied definition examined ideas that promoted certain legal codifications such as human rights standards. The actors as individuals or nation-states used scripts instead of self-directed initiatives to motivate change. Often the role of the nation-state was to change and adapt constantly. The authors noted that the properties of the culturally constituted nation-state were to exhibit a degree of isomorphism in structure and policy and vary to become rational. Inadvertently, nation-states decoupled in purpose and structure or intentions and results (Meyer et al. 1997, 152). The expansive structuration in a standardized way attributed to the institutions transferring globally before the ideology of the nation-states matched the purpose or intents of the project. Moreover, the central government may direct the expansive structuration of unrealistic five-year plans that fail to meet the needs of citizens. But the five-year plans promoted growth in idealized world cultural norms such as improved gross domestic products, extended national education, and increased exports. Still much of the project relied on post-World War II developments of state building that privileged democracies.

The world society scholars discredited internal changes affecting global dynamics. Because the “internally’ generated changes are infused with world-cultural” concepts for proper conduct (Meyer et al. 1997, 160). The strong emphasis of Western “correctness” implied that the less widespread norms to be inferior. The rejection of dominant world cultures which are notably Western and Christian norms, the authors viewed still followed some script for social order and purpose. Furthermore, the authors contended that the script of social movements followed the Western standards for

organizing. However, Meyer et al.'s division of nationalist and religious organizations discounted the contentions existing within a nation-state over national or religious teachings. Therefore, the world polity model somewhat overlooks religion and other forms of rational or irrational knowledge.

Meyer et al. (1997, 169) did not distinctly substantiate the varying nuances in cultural and ideological inconsistencies around the world. Nation-states following proscribed scripts are important to note, however, the level of contention that is felt domestically regarding what are often legal changes are not easily absorbed into the existing social and national cultures. What Loveman (2005) labeled “symbolic power” is significant since the central bureaucracy at early stages of nation building cannot wield enough power to have citizens act in accordance to the written law.

Global norms mature into practice and acceptance. Recent sociological studies on human rights treaties (Cole 2005, 2012, Hafner-Burton and Tsutsui 2005) highlighted a popularly legislated law that had not been regularly practiced. The case of human rights violations within nation-states that passed international treaties and domestic laws to protect human rights standards captured the gap between ratification and compliance. Why nation-states agreed to sign onto human rights treaties followed three major lines of arguments (Hafner-Burton and Tsutsui 2005, Hafner-Burton et al. 2008). The first argument examined how powerful liberal nation-states forced the resource-deprived and repressive regimes to agree to treaty conditions. Hafner-Burton et al. discredited the power politics model because powerful liberal regimes are not signed onto human rights agreements themselves. The second line of theorizing understood the tactical aspects of the “liberal approach” in signing onto human rights treaty (Moravscik 2000). But

statistical evidence cannot support the claim for regimes agreeing to human rights protections before institutions for enforcements are built up domestically. The third thread was an “ideational” approach that emphasized societies learning to value the content of the law. The “ideational” approach anticipated repressive regimes to change their minds about human rights violations (Hafner-Burton et al. 2008, 121). Constructivism from international relations (Finnemore 1996, Katzenstein 1996) developed the “ideational” approach. Studies on human rights treaties examined how economic power converged around ideas and norms.

The world society model, nonetheless, remains a fruitful theoretical orientation in that even though ideas do not always directly travel from the source to the peripheries, the logic of legitimacy remains true in the realms of international law and finance. As I examined the treaties, I noted that during the span of the 19th century, Western legal and business procedures usurped prior norms in several Asian states. Since the 16th century, Western ideas traveled practices in South America (Mahoney 2010) and Africa (Agawu 1995). Meyer’s theories conceptualized the logics for formal and informal empires. In informal empires, soft power (Nye 2004) from a dominant world power influences the actions of other nation-states. In formal empires during the 19th century, scientism and positivism mandated certain Weltanschauung.

Studying empires requires an interdisciplinary approach. Go (2008) bridges multiple approaches in sociology and IR. His contribution was appending a field approach to macro-level historical analyses of world society and world systems theories. Go, as part of the Michigan School, added Bourdieuan field analysis to the study of empires and globalization. Go grouped materialist orientations towards globalization as

the world systems theory in sociology (Wallerstein 1984) and realism in international relations (Go 2008, 204). The institutional approach included world polity or world society model (Meyer et al. 1997) and constructivism in international relations. In sum, institutional approaches in sociology and IR provide rationale for material consequences for nation-states.

Organizations and Nation-States

Through treaties, high contracting parties engaged one another. Literature in organizational learning provided useful terminology such as knowledge acquisition, information distribution, information interpretation, and organizational memory (Huber 1991). However, the theories lacked substantial empirical testing. This article tests how nations as an organization acquired knowledge of the Western international system. Even if the process was not voluntary on both sides, contact with new ideas provided opportunities for re-interpretation and other institutional changes. As Feldman and Kanter (1965) noted, an organization seeks "additional alternatives when the consequences of the present alternatives do not satisfy its goals" (622 [1991]). For nations, a breakdown in the existing structures and the loss of support from the nations' elites led to macro-level restructuring (Skocpol 1979, Hobden 1999).

The introduction of new legal terminologies drastically affected Asia's compliance with modern international law and the types of relations that ensued. The game of language in sovereignty remains strong not only in debates across the realist to liberalist spectrum. The game is not only an aspect of the game theoretical and rationalist model found in international relations today.

Positivism

Despite the polysemy of institutions such as economics, politics, and status groups, which make up a state, legal institutions fundamentally define the state as an entity in the international system. Gerritt Gong's (1984) analysis of European legal treatises highlighted Westerners' perceptions of Asians as progressing towards civilization. He studied how international law professors and practitioners in the 19th century created categories for semi-civilized nations (Gong 1984). Positivism in law and social science motivated unwelcome discourses regarding eugenics and incorrect assumptions about race. In the 19th century, social commentators such as Gobineau wrote racist tracts on miscegenation and racial hierarchies, which influenced public perceptions and legal scholarship (Young 1995). Positivism and eugenics promoted ideas of the *cientificos* in Mexico, which resolved to expunge superstitious beliefs in Latin America (Meade 2010, 153). Positivism, in part, was an effort to deemphasize the dogma of Catholicism as well as folk religions. Strict scientism invalidated organic cultural

The French colonial mind developed amidst debates among racial theorist such as Le Bon and Gobineau in the late 19th century (Thomas 2011, xiv). Lorcin (2011) added to the discussion of French colonialism that the discourse had been more masculine and women's voices were silent (15). In general, colonialism in the Middle East, Africa, or Asia had focused on "artificiality" of the colonial state (Jabri 2013, 93). And the emphasis of social scientists had been on political mobilization or intellectual discourse. More and more the discussion detracted from material consequences and the validity of legal agreements.

Differing Orientations to Law

International relations acknowledge law's significance differently. Sociological approaches to the study of law, examine how cultures construct and attribute meaning to legal practices. Sociology of law made strides to include cultural and social structures into legal rationales. The focus on colonial law has been limited. The lack may be attributed to the amount of contextual understanding needed to address 19th century legal norms. In pre-modern and colonial states, law's reach differed according to the nation's bureaucratic organizations and the person's social status within that nation (Cassel 2012, 8). Creating bonds through treaties allowed Europeans to forge relationships with Asian states (Anghie 2004, Halliday and Osinsky 2006, Koskenniemi 2002, Peters 2009). The gradual implementation of written law superseded oral agreements in Asia, which affectively led formal law to become an inescapable aspect of modern life globally.

Different schools of sociology recognized the global reach of international law. Halliday and Osinsky (2006) identified world polity, world system, law and economic development, and postcolonial studies as the four major perspectives on globalization, which included some analysis of law. In postcolonial studies, hybridization of law, where laws of multiple countries inform each other's legal systems towards change, is the product of globalization (Liu 1999, Nakamura 2004).

Postcolonial studies and the Law

In postcolonial studies, even though the colonizing and colonized nations had incongruent legal orders i.e. legal pluralism, such that foreigners in China followed one set of legal practices while the Chinese followed local customs, the convergence of law i.e. hybridity where Western legalists accommodated local customs in Asia had not been widely theorized. Postcolonial theory remains marginal in international law and the

third-world perspectives in international law (TWAIL) is small (Anghie 2004). Law did not hold a central place in postcolonial theory either, although historians are increasingly studying law (Cassel 2012, Dudden 2005, Larsen 2008, Liu 1999). Instead of eschewing psychoanalysis of the subjugated persons (Bhabha 1994, Dudden 2005, Duara 2003, Said 1978) and the material consequences of economic relations (Hobson 1938), legal agreements captured the spoken and unspoken standards for subjugation and economy practices.¹ Historians of contested sites concentrated on precarious legal conditions such as legal pluralism (Griffiths 1986, Heuschert 1998), where more than one legal order co-existed. The production of new legal codes contributed to colonial legacies.

In contested sites, law has had to intervene. Postcolonial studies emerged from India and other former European colonies where laws were directly imposed to quell uprisings. The “Rule of Law” as it applied to colonies had its own inherent contradictions. Especially for the British, “Rule of Law” kept power as a right that Britain extended to local rulers. But these applications of law changed political dynamics within a state. Women’s rights and family law in post-colonial North African states adapted to assuage some national preferences in the former French colonies (Charrad 2001). Laws occasionally led to violence. In India and Egypt, legal entanglements with the British included treaties signed from years 1856 to 1882 that resulted in wars (Hussin 2009). Actions before and after the signing of treaties affected national economic and political outcomes.

For the United States, America’s geographic distance from Korea prevented the United States from investing heavily in Korea. The United States’ practice of foreign

¹ As Marco Sassòli noted, “There can be empty written rules, but never empty unwritten rules” (1990). “Es (kann) wohl nichtssagende geschriebene, nicht aber nichtssagende ungeschriebene Normen geben” from *Bedeutung einer Kodifikation für das allgemeine Völkerrecht 187* as appeared in (Villiger 1997).

diplomacy used economic relationships as a key feature. The U.S. primarily desired the most-favored nation status from China, Japan, and Korea (Dennett 1922). The 19th century roots linked to the United States' usage of multilateralism in the 20th century as a foreign relations policy (Beeson and Higgott 2005).

In other parts of Asia, Great Britain and Russia kept close watch over major ports in the region. By the 1860s, the British had a stronghold over the major ports of China. Even though Russia was collapsing from within, the Russian empire still had great interest in the northern border regions of China. Further, Russia and Japan volleyed for control over the Sakhalin Islands and the fisheries industry. Within Japan, colonization began within with the Ryukyu Islands. The government expunged the Ainu ethnicity to promote a new unified Japan (Hirano 2009).

Intra-Asian Law up through the Nineteenth Century

Asia in the 19th century was a gravely contested site. Though the treaties between Asian and Western nations dealt with trade, the linguistic-legal practices such as Martin translating Wheaton's *Elements of International Law* (1836) into Chinese in 1865 created new layers of meaning into legal scholarship (Auslin 2004). The act of translating or creating transliterations for Western legal terms into Chinese and Japanese opened up the way Asian scholars scrutinized their language. For example, Mori, a Japanese professor, recasted Japanese as form of "deranged Chinese" and wanted a new language that suited the "modern nation" (Dudden 1999, 165). These changes in language affixed new meaning to old practices.

Traditional Chinese law had been referred to as a model; Nakamura argued that during the Qing Dynasty in the 19th century, law was not a model (2004, 156). Early translators misread "order" (令) as "current" (今) led Westerners to conceive Chinese

law to be affected based on time (Nakamura 2004, 42). Korean law was a derivative of Chinese customs, which idealized a derivation of power and authority from the central government (Shaw 1981). The refinement of legal terms relating to state autonomy came as a measure to align the Chinese legal system to the Western legal systems that relied on written law (Nakamura 2004). The Chinese legal scholars left more rules customary and had local offices make judgments based on specific cases instead of formalizing standards. The room for interpretation allowed plurality to exist so that privileges were granted to members of the royal family or court official under the “Eight Considerations” (*Bayi*) within China (Cassel 2012, 16). Distinctions according to ethnicity in China, social groups in Japan, and ascriptive birthright in Korea instituted plurality in domestic laws. After the treaties, Asian officials expected complete autonomy in domestic affairs regardless of the provision on extradition rights and allowances for foreign residences. Asian officials constantly questioned the validity of agreements with Western nations and avoided accepting contractual obligations.

Even though China had signed treaties previously, the Treaty of Tianjin (1858) was still considered a mere formality to the Chinese government.² The treaty to Chinese officials was performative. Treaties understandably had material consequences such as withdrawing foreign troops from China (D. Wang 2005, 17). Diplomat Gui Liang’s comments reified the apprehension that the Chinese did not put practical importance into legal documents. Gui Liang wrote, “The treaties of peace with Britain and France cannot be taken as real” (D. Wang 2005, 17). He dismissed the treaties as just a “few sheets of

² An important issue worked out in the treaty dealt with the residence of British officers in Beijing, which had special significance as the “Forbidden City.” The foreign ways were not respected because foreigners were barred from entering Chinese communities.

paper” that can “henceforth be treated as rubbish” (D. Wang 2005, 17). China did not share with the West, a pre-contractual understanding of international legal regime. Unsurprisingly, other treaties proceeded to emphasize written communications in jurisdictional and commercial intercourse so that the Chinese would learn to accept Western legal practices. The Europeans, who in the case of China were mostly British, found China’s unwritten but locally understood customs of commerce difficult to follow. The emphasis on documentation necessitated articles in treaties that provided detailed instructions for the Chinese on how to conduct business.

This legal change contributed to China’s commercial and fiscal demise. Up through the 19th century, China’s wealth was comparable to the Europeans in terms of industrial and technological advances. As Kenneth Pomeranz (2000) noted, the growth of Europe in the 19th century was surprising due to China and Japan’s high standards of living and longer life expectancies, which were better than European standards of that time. For the Europeans, law made unequal trading conditions beneficial. Westlake (1894) discussed the legal right to conquer. He noted that territories, which lacked an organized and recognizable form of government, were poachable. The Europeans felt it was within their bounds to recognize what met the “standard of civilization” (Gong 1984). Even the Stanley treaties that explorers made the Africans sign or the Native American treaties that the U.S. signed (Champagne 1983, Steinman 2012) were legal agreements.

Inter-Asian Law during the Nineteenth Century

For the Chinese and Japanese, diplomacy towards the Koreans captured the fissure in future visions within Asia. The Chinese attempted to use treaties to further ingrain the hierarchical tributary state relations that it had with Korea for centuries.

Furthermore, the Japanese advantageously benefited from the praxis of international law to gain Korea as a territory. The documents were significant for the conquerors and later the subjugated persons understood the ramifications of the treaties.³

Legal contracts between two nations were consequential whether the document was a short memorandum or a lengthy peace treaty. Modern colonialism used annexation treaties as a technique to gain control. Treaties were tools used to seize a territory that had resources and to admonish insurgents after insurrections. As a tool for conquest, the Japanese used varied types of treaties. Japan's colonization of Korea resulted from a sequence of treaties used to encroach upon Korea's diplomatic and economic affairs. With relatively short treaties on fishery regulations (1889), internal administration (1907), prison reforms (1909), and bank regulations (1909), the Japanese usurped Korea's rights to domestic sovereignty. Benign treaties such as the Korean and Japanese fisheries regulations of 1889 and the short documents on internal administration and the administration of justice and prisons in Korea undermined Korea's economic and political future (Korea 1891 [ct 1897], 375). The issues were not limited to economic gain. The Japanese used the documents to distinguish their practices from Koreans' past customs.

In early modern Korea, racial homogeneity did not prevent the Japanese from colonizing the Koreans, although the divisions among ethnicities intensified. With law, officials in power made finer distinctions based on ethnic heritage (Go 2004, Kim 2009, Wimmer 2008). But hierarchies in ethnicities or nationalities were not new in Asia. The tributary state system, the previous organizing structure for international relations in

³ The case of Native Americans are worse in that some protections that the treaties granted them were later annulled or unsupported by the white settlers.

Asia, specifically ordered other nationalities into statuses below the Chinese. The tributary state system differed from the European model of the international system, which promoted legal equivalence among nations. Despite the legal language of equality, the Europeans did not treat Asian nations as equals.

The different orientations towards law referred to how European and Chinese legal traditions differed. However, how fields studied law can be marked for their differences. Sociology of law had focused on contemporary trends where law provided room for misinterpretation, which led to undue discrimination practices. Colonial scholars added law to an ongoing list of injustices and subjective practices that colonizers laid onto colonized persons. Those that were already disadvantaged in resources had to combat the loss of legal resources. However both historians and sociologists drew on law as a form of ideology without complementing the material consequences of these ideas thoroughly. Adding to the various perspectives, I approached law as a pathway to economic reforms that intensified or made possible the inequalities of the colonial experience.

Western Legal Tradition

As Berman stated, the “western legal tradition” is an intellectual construct (Berman 1983). The trajectory of the Western legal tradition as it originated from Europe had spread to the Americas, Asia, and Africa. As one may wonder, the terms, “western,” “legal” or “tradition” needed definitions before they are accepted as wholly consistent terms. Berman noted that the Western legal tradition constantly evolved since the 11th century and legal developments are ongoing (Berman 1983, Berman 2003, Goldman 2007). Contemporary scholars should not uphold legal traditions with blind historicity,

which lauded the development of such institutions as logical and performing a functionalist perspective (Berman 1983, 17).

Fundamental changes in the Western legal tradition included the shift of “law as order” to “law as justice” (Berman 1983, 22). Berman’s seminal work from 1983 distributed widely, Goldman, reassessed Berman’s typology of only four out of ten characteristics of the Western legal tradition remaining. The four traditions stipulated that 1) law differed from politics or religion, 2) the legal profession was a socially closed network, 3) law was systemic and conceptual, and 4) legal learning operated outside the law (Goldman 2007, 16).

According to Berman, six other characteristics are no longer relevant. Berman presumed more often now that law lost its sense of hierarchy, people believed less in changes in law being continuous, and changes in law were believed to be based on external pressures (Goldman 2007, 16). Berman also believed that people viewed law to be “an instrument of the state” (Goldman 2007, 16). He noted that how society exterminated multiple jurisdictions to form a centralized set of regulations and how political instability promulgated new laws or reformed old laws with new content (Goldman 2007, 16). Goldman contended Berman’s theory because current international relations policy of the European Union and the World Trade Organization exercised supranational powers over domestic sovereignty.

Jurisprudence, as a branch of philosophy, pondered what people could know through law. Enlightenment scholars such as Kant influenced Western international law (Koh 1997). Especially in the liberal vein, Kant appropriated three rights – 1) right from arbitrary rule, i.e. negative rights, 2) rights to protect and promote capacity and

opportunity, i.e. positive freedoms, and 3) the right to democratic participation or representation (Koh 1997, 2628). Koh, a scholar of transnational legal transaction,

The spread of Western international law occurred through treaties and legal training. In Europe, elites accessed entry into the legal profession. In 19th Asia, the foremost of the elites acquired Western legal training (Dezalay and Garth 2010, 32). W.A.P. Martin's translation of Wheaton into Chinese in 1863 spread western legal education to Asia. Wheaton first distinguished treaty-making capacity in his "Elements of International Law" (1894), and today the term implied (Peters 2009). Sovereign states held treaty-making powers.

Fitzmaurice (2010) noted how 1969's Vienna Convention on the Law of Treaties (VCLT) codified the works of treaties. Treaties can be normative or law-making which implied that laws furthered the structure making of international law. Normative treaties set up international standards. On the other hand, contractual or reciprocal treaties were treaties written to further state interests (Fitzmaurice 2010). Especially after 1969, the standard in international law had been to favor stability instead of changes (Fitzmaurice 2010). Breaking the terms of the treaty was difficult. But the grounds for termination are material breach of the treaty, fundamental change of circumstances, supervening impossibility of performance, emergence of new peremptory norms, armed conflict, extinction of a party, or desuetude where from the conduct of the parties the signees acknowledge that the treaty was no longer binding (Fitzmaurice 2010). The stipulation on termination are noted in article 42(2) and article 56(1) of the VCLT in that treaties can be denounced if the treaty provisions allowed for the withdrawal or the right to terminate was implied in the treaty.

Undeniably, treaties mark international cooperation. Modern international law did not develop shortly after the Peace at Westphalia. However, the legal standards following the positive law tradition emerged in the 19th century after the Napoleonic Wars and the Congress of Vienna in 1815. The philosophical discussions on law remain well rooted in theology and 15th century legal scholarship as well. Like any academic field, the field of pre-modern international law has divisions and controversies. Historiography of the field would capture how there was never a solid definition for what is international law. Studying treaties that were signed before the finalization of the Vienna Convention on the Law of Treaties (VCLT) passed in 1969 presented deep challenges because the terms were not set; they were being formulated. The VCLT did not address the issues of unequal treaties but in 1969 treaties were considered invalid if the council saw violations to the laws of engagement.

Unequal Treaties

According to Peters (2007), a treaty can be deemed unequal due to its substance and/or lack of consent. The substance of the treaty can be unequal based on four different qualifications, which may refer to the lack of reciprocity, infringement of sovereignty, violation of peremptory international laws, or the impingement of article 103 of the United Nations Charter, which deals with the encroachment of self-determination, violation of sovereignty, or the use of force. In cases for 19th century bilateral treaties, most inequalities fall on the lack of reciprocity in the treaty conditions. The Chinese often stated that their treaty partners did not provide in exchange similar trading benefits that the Chinese had granted the other party.

Many of the treaties of interest in the case study chapters of the dissertation focus on what are often called “unequal” treaties. According to the *Max Planck Encyclopedia*

of *Public International Law*, “unequal” treaties are pejorative terms used to categorize 19th century treaties that Asians signed with European nations. The rudimentary division of the non-West versus the West led to another set of assumptions about the “uncivilized” versus the “civilized” (Peters 2009). “Unequal” treaties also evoke 20th century colonialism and capitulations, which were more specific to sultans of the Ottoman Empire. Peters (2007) noted that the historical accounts of unequal treaties disproportionately deal with China. The popular view of why unequal treaties existed indicated European rivalries to take over Asia. The Asians in the 19th century were not considered indigenous people (Craven 2005, 343).

19th century treaties dealt with the sovereignty differently from nations after the UN, in that the notion of sovereignty formalized along with the concept of international law. Signing a treaty meant a nation had sovereignty. Infringement of sovereignty became more difficult to prove since the signing of a treaty symbolized a nation’s status as sovereign nations. And the treaty could be viewed and accepted by other members of the international society as documents ratified by two or more sovereign nations. Also the sovereignty principle was sanctified after the ratification of the UN charter.

The violation of *ius cogens* or peremptory norms also invalidates a treaty as unequal. But the most fundamental peremptory norm handles sovereign equality. In writing treaties, the partners are considered legal equals even if nations’ sizes, military and economic resources, population, or date of establishment differ substantially. Signing treaties under duress also invalidates the treaty. The use of force was more common in the 19th century and the conditions provided in the UN charter curbed the use of force in 20th century contracts between nations. Conflicts with Article 103 of the UN

charter render treaties inapplicable but did not invalidate them. The text of article 103,

“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail,” (www.un.org)

reaffirmed article 2 which upheld sovereign equality and reprimanded the use of force in negotiations.

Especially with nations before the formation of the UN, defining which nations are sovereign and capable of signing treaties becomes highly contentious. Soviets publicists have argued that treaties could never be equal since the two parties preparing the treaties are rarely equal (Peters 2009). The Communist Chinese asserted the few that most treaties were unequal not only due to the substance of the treaties but also because the signing parties were not equal (Chiu 1972). But the historical perspective of the Soviet scholars would make *pacta sunt servanda* in that “agreements must be kept” difficult to assert for previous treaties. But as article 51 and 52 of the Vienna Convention on the Law of Treaties noted, the term “force” could be military force, political pressures, or the threat of economic sanctions.

Unequal treaties in particular changed the international orientation in East Asia. The consequences of unequal treaties may take decades to correct. The *pacta sunt servanda* may be suspended to *clausula rebus sic stantibus* (“things thus standing”) to remove certain treaty agreements. Peters argues a popular legal position that unequal treaties were an “innovation” to use in East Asia (Peters 2009). The treaties managed to spread international law globally. But she also notes that the Japanese built their military,

enacted social reforms, changed political structures, and increased economic production as a response to the treaties (Peters 2009).

In a contemporary context, treaties can be invalidated in cases where states are dissolved. The new law (“*de Lege Ferenda*”) states that the treaties should have consent from all contracting parties, be mindful of the judgment of other countries in the international community, and provide laws of mutual benefits if possible. Unequal treaties as an issue within international law did not resolve with the end of colonialism. Wealthier countries extracting land, natural resources, and labor from poorer nations continues to affect international bilateral and multilateral agreements. The legal tenets developed during the 19th century still control the dynamics of globalization.

Treaty Interpretation

Legal scholars commonly use three modes of treaty application and interpretations. The three methods of treaty interpretation are the textual approach, intentionalist approach, and the teleological approach. Textualism stays closely to the wording of the documents. And vague meanings of certain words are situated in the language that the piece is written. The intentionalist approach is not practiced as commonly (Bederman 2001). It fixates on the intent of the drafters. The task is difficult because much information on the historical context and even the biography of the drafters become necessary for interpreting the treaty. The teleological approach focuses on the object or the purpose of the treaty. The treaties in this paper are analyzed using the three approaches because these treaties were written at least 100 years ago, intentionalist and teleological approaches are more possible in these cases than for more recent treaties. The effects of the unequal treaties include political and economic transformations in East Asia.

Similarly, Fitzmaurice (2010) distinguished treaty interpretation with four principles. Principle 1 was the textualist view of interpreting the actual text. Principle 2 was too close to the intentionalist approach of updating what the authors might have implied for the contemporary context of previously written treaties. Fitzmaurice's principle 3 examined the treaty in their entirety where excerpted passages were not interpreted on their own. Principle 4 of the scheme mirrored the teleological approach in that the effectiveness (*ut magis valeat quam pereat*) of the treaty referred to the end goal achievable with the treaty. Fitzmaurice noted that the four principles are associated with the subjective, which was based on authors' intentions, objective, which was based on the text, and teleological, which referred to the object and purpose, approaches. Examining the object and purpose were more synonymous with English and German legal practices. French scholars considered the title, preamble, an article in the treaty, or the preparatory work (*travaux préparatoires*) to provide the objective (Fitzmaurice 2010). The analysis of *travaux préparatoires*, which was mentioned in article 31 of the VCLT remained a controversial source for treaty interpretations.

The analysis of legal texts employed terms developed in comparative literature. Laws help to define the dynamics of social change. Law can act as a label for existing social practices that achieve post hoc codifications, but law can also be a prescription for social conduct at the individual level. It also plays a large impact for the future since historical events after passage of certain laws have a ripple effect on society.

The way to conceptualize treaties remains varied. In Weber's terms, treaties are a part of "public" laws, which "regulate state-oriented action" (Weber [1922] 1968, 641). The objectives of the state (*Staatsanstalt*) are presented in treaties. Making contact with

other states is an aspect of state power. State power can be a legal representation of the monarch's patrimonial rights or constitutional rights which refer to the rights of citizens, which later become known as vested or inalienable rights (Weber [1922] 1968, 642). The state remains an important component for the practices of international law.

International law is built upon ideas from various national laws and in return informs legal changes within states. Regardless of the way in which the domestic state is organized, the treaty can represent how the state wants to project their stances to other states. Tying international law to the concept of natural law was largely the Western influence found in current frameworks of international law (Bederman 2001). The naturalist and positivist perspectives of international law set the foundation for legal scholarship.⁴

The theory and doctrine behind international law were not uniformly established. International law has a strong basis in theoretical and abstract thinking. Koskeniemi (2007) noted that Grotius's view of universal law related to Hobbes and Pufendorf's theories that humans wanted to avoid pain and seek pleasure. In the 18th century, diplomacy in Europe enforced curbing warfare. The development of civilizational stages examining history developed during the 19th century (Koskeniemi 2007).

Treaties' Significant Terms

The practice of international law progressed in the 19th century to affect colonization and motives for trade. Treaties secured trading rights in many cases. Trade

⁴ An early proponent of the naturalist view of international law was Franciscus de Vitoria. Writing in the 16th century, Vitoria was one of the earliest formulators in international law. He addressed the issue of Spanish colonization of the Americas where he developed an argument based on natural law. The natural law thesis explores the realm of innate rights given to humans. Though in cases of imperialism debate arises as it did between Sepulveda and de las Casas whether aborigines can be considered human. Vitoria's *De Indis Et De Ure Belli Relectiones* serves several purposes. It addresses just causes for war and compels moralistic and economic rationale behind the imperial policies of Spain.

along with civil liberties grew to be prominent themes. Treaties of the 19th century often refer to two particular rights, the most favored nation clause (MFN) and extraterritoriality laws. The most favored nation clause promoted benefits such as low tariffs to insure frequent economic exchange between two states. The privileges enjoyed via the MFN clause are valid for both parties. Historically, the MFN clause can be traced back to the 11th Europe (Newcombe and Paradell 2009). A treaty between England and Burgundy dating back to August 17, 1417 used the MFN clause to grant each other rights to use ports in the others' domain. MFN clause refers mostly to trade treaties and was developed in the 17th century for diplomatic negotiations. The clause can be simplified to indicate that the contracting parties agree in respects regarding "commerce and navigation, any privilege, favor, or immunity which either grants to a third state shall be granted to the other" (Hornbeck 1909, 398). The "most-favored-nation" was mentioned in a trade treaty between Denmark and the Hanse cities (article 6) signed on August 16, 1692. Early international treaties between the United States and France on February 6, 1778 also included the MFN clause. The U.S. granted France a most favored nation status for the equivalent in return (Hornbeck 1909, Wilson [1910] 1939). During the 18th century, MFN clauses frequently appeared in commercial treaties of Europe, and the application of the clause extended beyond the commercial to political terms.

For instance, Great Britain had most favored nation status in China, which meant that Great Britain enjoyed privileges such as low tariffs and permissions to enter ports. Via commercial treaties, Great Britain introduced ways to protect Christian missions and reformulate the role of merchants in a neo-Confucian society. In the context of 19th treaties between Western powers and East Asian nations, MFN clause encapsulated a

realist perspective “to gain and to preserve the greatest possible advantages” (Hornbeck 1909, 397). Great Britain’s MFN status with China encouraged other Western powers to write treaties with China and to include the MFN clause. The MFN clause was a fluid marker. If for instance the United States negotiated a better import rate with China, without having to sign a new treaty, Great Britain would enjoy the better rate that the U.S. negotiated. Great Britain (and those following Britain) later used the privileges to deplete China’s resources.

Another feature of the unequal treaties in East Asia was extraterritoriality, which granted foreign residents immunity from being tried under Chinese, Japanese or Korean laws. International law entangled Western and East Asian norms in the criminal justice systems. In terms of regulating conduct, neo-Confucian states valued adherence to certain rituals such as ancestral worships and laws against suicide that Western states could not consider seriously. More commonly, crimes committed by British citizen against Chinese citizens were leanly persecuted. Whereas Chinese citizens committing an offense against a British citizen led to a trial in China where a British official was present and able to oversee the process. The procedure in which criminal trials were processed was part of larger corpus of Western legal traditions, which were rooted in ideas of certain civil liberties.

The introduction of civil liberties that were established in the West via treaties can be seen as part of setting the “standard of ‘civilization’” (Gong 1984). The “civilization,” which initially included Christian European nations, later included the United States and Japan. Gong examined a 1905 treatise on international law by Georg Schwarzenberger

where he identified at least five requirements of the standard of ‘civilization.’ To paraphrase, Schwarzenberger wrote,

“1. a ‘civilized’ state guarantees basic rights, i.e. life, dignity, and property; freedom of travel, commerce, and religion, especially that of foreign nationals,

“2. a ‘civilized’ state exists as an organized political bureaucracy with some efficiency in running the state machinery,

“3. a ‘civilized’ state adheres to generally accepted international law, including the law of war,

“4. a ‘civilized state’ fulfills the obligations of the international system by maintaining adequate and permanent avenues for diplomatic interchange and communication,

“5. a ‘civilized’ state by and large conforms to the accepted norms and practices of the ‘civilized’ international society, e.g. suttee, polygamy, and slavery were considered ‘uncivilized’, and therefore unacceptable” (Gong 1984, 14-5).

Schwarzenberger wrote about the ‘civilized’ state as a European from a Christian perspective and directly targeted non-western cultural practices to be barbaric. East Asian states in turn labeled Westerners as barbarians. Divergent normative spheres created tensions during the earliest diplomatic missions between Great Britain and China. Notable “hospitality errors” made early during diplomatic exchanges highlight the normative tensions that Western and East Asian nations wrestled with.

Treaties’ Contents

The tensions were partly addressed in the treaties of the 19th centuries. I argue throughout that the treaties’ contents mainly served economic interests. The treaties raised major themes including 1) securing trade, 2) teaching how to transact business and

ways to aid smoother exchange, and 3) protecting the lives and property of foreigners living in Asia. Explicitly, the ease and facilitation of trade saddled along codes of conduct that the Europeans had developed.

The unequal treaties touch upon colonialism and the end of isolationism of the early 20th century. Especially in the 20th century, legal documentation affected state relations. The problem of inequality is a local and global phenomena that cannot be overlooked as a social artifact. Given historical laws affected modern legal standards (Craven 2005). The differences of cultural norms and values, which arise today in debates regarding universal human rights versus the Asian values argument present similar paradoxes that were presented in treaties. The troubling aspect of treaties and inequality remains that the language and germinating ideas of international law regarded the equality of nations as an underlying principle, despite evoking recognition of national sovereignties. The treaties of the 19th century could not protect domestic sovereignty for every nation.

Asian states had organized forms of government and an intra regional civilization that did not conform to the western “standard of civilization” (Gong 1984). I examined how the introduction of international law affected Asian states, namely China, Japan, and Korea. Certainly economic changes affected Asian states, however, social conditions and traditional methods for business conducts changed as well. The expansion of international law as it originated in Europe spread to Asia via the imperial urges of European states during the long nineteenth century. The rationale behind the Berlin West Africa conference (1884-1885), which emphasized commerce towards a free trade agreement and humanitarian intervention as the motive for entering Africa was also

pertinent to Asian states, who were perceived as potential commercial partners. Also the discussion of Asian governments as being too decadent and non-Christian (Westlake 1894, 51) ushered in new protections for foreigners residing or traveling within Asia. Thereby creating avenues where foreigners could proselytize or build institutions such as schools or hospitals.

The historical period in which the treaties were written remains key since the treaties in and of themselves became signifiers of what Martti Koskenniemi (2002) would call the “gift of sovereignty.” During the 19th century, the distinction between natural law and positive law developed. Natural law, as Wheaton defined it, is based on innate condition of a state. Natural law is largely based on morals, divine, and preconceived notions of what is the natural state. Positive international law, which predominated during the long 19th century, envisions states to conform to a set of laws that have been constructed. Since the universal law of nations is difficult to assess, Wheaton noted that public law was a construction that “with slight exceptions, has always been, and still is, limited to the civilized and Christian people of Europe or those of European origin” (1916, 17). Wheaton’s perspective of public international law preceded the “Scramble for Africa” and the end of isolationism in Asia. The discussion of the various sets of treaties will show that the function of the treaties signed between Asian and European states was to include economic and social provisions to promote western standards of civilization.

The connection between theory and practice continued in the debates about international law, enforcement, and efficacy. Hafner-Burton and Tsutsui (2005) presented empirical evidence as to why international human rights treaties could not

improve human rights conditions within sovereign nations that signed onto the agreements. Hathaway (2005, 2008) directed the discussion into theoretical justifications of international law. She argued that the Legal Enforcement and Collateral Consequences international treaties suffered as inefficient because treaties lacked overarching institutions that check on compliance.

International law is “usually obeyed” but “rarely enforced” (Koh 1997, 2603). There are four common ways – coincidence, conformity, compliance, and obedience - to interpret written law and legal conduct (Koh 1997). First, the coincidence factor assumes that no causal relationship exists between written law and its ineffectiveness. Second, conformity theory suggests that people conform to the rules only when it is convenient for them. Third, people are compliant based on specific rewards or fear of punishment. Fourth, once the behavior has been internalized as a norm, then there would be obedience. The weak commitment in contemporary international treaties was a puzzling outcome in comparison to 19th century treaties where bilateral treaties implied that representatives from one party could be present in the other’s country to enforce the conditions of the treaty.

Sociology of Law

Notably sociology of laws did not exist while sociology law embodied a monotonal view of law. Law, in however way you wish to look at it, was not monotonal, universal, and one-dimensional. The logic pure law was a myth since legal practices were culturally and historically mediated. Law had a less forthright treatment in sociology but even when law was examined intellectually, the examination treated law as a neutralizing or benign backdrop. When law was discussed in the sense of

discrimination (Black 1993, Nelson and Bridges 1999), inequality was discussed uniformly as well. Simply, law was not the same for each person that encountered it.

Halliday and Osinsky's annual review article on the "Globalization of Law" (2006) did not emphasize law's flexibility and dynamism. Even though Halliday and Osinsky (2006) presented the four dominant forms of legal analysis from world polity, world systems, law and economic development, and postcolonial studies as having different mechanisms and power orientations, the overall scope of the article examined law in a mono-tonal way (459). Notably, each perspective assumed that law traveled through a few sets of channels. Law existed globally as written and standardized texts and also as unwritten and customary norms.

Different schools of sociology recognized the global reach of international law. Halliday and Osinsky (2006) identified world polity, world system, law and economic development, and postcolonial studies as the four major perspectives on globalization and law. The world polity school viewed the outcomes of law to come via legal convergence, isomorphism, local adaptations of global standards; the agency through which law transferred globally was from world culture international governmental organizations, international non-governmental organizations, nation-states, mass media and local actors; the mechanisms included modeling nonreciprocal adjustments, capacity building and suasion; the ideological power motivated the change, and the structures through which the operation occurred was in international normmaking arenas such as the United Nations, the international advocacy networks, and professional communities (Halliday and Osinsky 2006, 459). For the world systems school, the outcome were the weak institutionalization of global law; the nation-states, corporations, and anti-systemic

movements were the agents; the mechanisms included economic, political, and military coercion; economic, political, and military power extended the reach of the law; and the global actors' economic and political relations created the structure or arena for the perspective (2006).

The law and economic development perspective studies outcomes based on agreement upon commercial rules and “law-enabled facilitation of economic growth”; the agency developing this strand of thought included the international financial institutions, aid agencies, nation-states, international organizations, professions, and civil society groups; the areas' mechanism was through modeling, nonreciprocal adjustment, rewards, “capacity building, suasion, and economic coercion”; economy and ideology drove the law and economic development schools; development occurred in the realm of legal regulation of economic relations globally and international networks of legal and economic professionals (Halliday and Osinsky 2006).

The agents in postcolonial theory were nation-states, local elites, local social movements, and disadvantaged groups; the mechanism for exerting power included economic coercion, modeling, nonreciprocal adjustment, rewards, and suasion. The actors used ideological, economic, and political power in the realm of international normmaking arenas, legal and advocacy networks, and aid and dependency structures (Halliday and Osinsky 2006, 459). The postcolonial studies examined law during times of transitions.

Neo-Institutionalism and the Law

The landscape of legal scholarship was non-exhaustive (Donoghue 2009). Still sociology of law extended from Roscoe Pound's notion voiced in the 1950s that law was a social institution situated in a civilized society (Goldman 2007, 5). As Suchman and

Edelman (1996) indicated in “Legal Rational Myths: The New Institutionalism and the Law and Society Tradition,” sociology of law and sociology of organizations had been paired as institutions. Suchman and Edelman used examples of the “legal fiction of the formal organization as ‘corporate person’” to illustrate how law allows for a certain conceptualization of the organization (Suchman and Edelman 1996, 906). The two main schools of sociology in law was to either view law as set of formal rules and obligations in the vein of “legal formalism” or as Suchman and Edelman would propose viewing law as a social institution that was culturally and structurally embedded (Suchman and Edelman 1996, 907). Individual behavior may be culturally driven while organizational behavior was rationally and materially driven (Suchman and Edelman 1996, 914).

Institutional theorists envisioned linkages to institutional norms as a form of “loose couplings” and “ceremonial conformity” and actors manufactured the myth that their actions were rational when in fact it was done merely as a ritual act (Meyer and Rowan 1977). The three landmark findings of New Institutionalism resolved (1) organizations as “complex social actors” who acts in a rational and technical manner according to the cultural environment, (2) because culture was significant, the organization comply to the rules through symbols and substance, and (3) in an environment where much symbolic displays existed, institutional isomorphism led to a social construction of legality (Suchman and Edelman 1996, 918). DiMaggio and Powell (1983) suggested that when the law was less certain, the organizations made greater efforts to make sense of or legitimize the law.

For comparative historical sociologists such as James Mahoney, institutional theory had grown abstract and vague (Mahoney 2010, 3). Mahoney also noted the

importance of Latin American nations' initial differences. Without placing too much stake at the colonial relationship that the Latin Americans had with Europeans, the historical paths are linked as exceptional key indicators. The differences between Asian and Latin Americans' experiences with European colonizers traced how laws mediated the varying paths to economic stability in Asia and the Americas.

Sociological Studies of Colonialism

As Julian Go's (2012) article, "For a Postcolonial Sociology" remarked, sociologists have not fully addressed the issue of colonial identity that scholars of cultural studies debated energetically in the 20th century. Go (2012) cited that between 1980 and 2011, the *American Journal of Sociology* (109 times) and the *American Sociological Review* (twice) published far fewer articles or book reviews that drew on postcolonial theory than in leading history of literature journals (Go 2012, 2). In comparison, hundreds of articles (362 articles not including those that referred to Said's *Orientalism* directly) cited postcolonial theories in select journals in literature and history. The large dismissal of postcolonial theory in sociology fails to underscore key socio-cultural changes that occurred during times of colonial transitions. In his essay, Go (2012) provided an elegant connection between actor-network theory and the mechanical growth of industries in colonial states. He proscribes that works on relational theories in sociology (Go 2012) can broaden cultural sociology's impact on the discipline overall. The study of colonial governments grants sociologists access to theories on the diffusion of legal and cultural practices that connect to other large-scale macro-level shifts not limited to postcolonial states.

Sociologists studied the institutions that historians and literary theorists examined without directly engaging the postcolonial literature. Works on revolutions (Skocpol 1979, Goldstone 1991, Tilly 1993) and authoritarian regimes (Brubaker 1992, Berezin 1997, Leuenberger 2006, Mann 2004) approached similar challenges involved with state restructuring, new cultural scripts, and ethnic boundary formations (Brubaker 1992, Wimmer 2008). Historical sociologists of postcolonial sites (Barkey 2008, Lange 2009, Mahoney 2010) and path dependency models of postcolonial Latin American states (Mahoney 2001) also drew on modern state-formation literature (Adams, Clemens, and Orloff 2005). The cultural analysis of historical changes included voicing marginalized perspectives.

Cultural sociology has not avoided the topic of postcolonial states and subjects by any means but there is room for legal analysis nonetheless. Sociologists have delved more specifically into questions of decolonization (Strang 1990, 1991), gender (Bhambra 2007, Charrad 2001), economic development (Chibber 2003), imperialism (Go 2008), ethnicity (Kim 2009, Shin 2010), international relations (Go 2008, 2012), and race (Loveman 2005, 2009). Broadly defined, the international relations (Go 2008) and postcolonial studies (Steinmetz 2003) are dichotomous along material and economic versus cultural and socially constructed realms. These studies built from either the materialist or psychological and culturalist lenses that post-colonial scholars prescribed.

Postcolonial studies, international relations, and critical legal theory are disciplines that sociologists of culture could draw from. As Go (2008) previously noted, the sociological approach has a natural segue to international relations theory. In international relations, the norm-based constructivist view remains marginal (Finnemore

2003) but is growing. Especially the constructivists' engagement with international law accepted the challenges of cultural variability in terms of legal accountability, efficacy, and enforcement (Carlsnaes et al. 2002, Hafner-Burton and Tsutsui 2005, Hathaway 2008).

Sociological investigations of law had made remarkable strides in addressing social actions under given sets of formal law. Laws were not unchallenged decrees that were universally revered. Sociologists studied the failure of compliance to human rights law (Hafner-Burton and Tsutsui 2005, Cole 2012). This engagement deepened the understanding of legal accountability in international relations (Suchman and Edelman 1996, Hobden and Hobson 2002). The law and society approach used more cultural and norm-based choices to comprehend organizational decisions, but the studies chiefly examined contemporary law. Therefore, legal transformations in colonial states required an integrated discussion of postcolonial studies, sociology of law, and comparative historical sociology. Building from rich traditions, a multidisciplinary approach to law and social change opens new avenues for a richer analysis of colonial regimes.

The division in studies of colonialism is at least two-fold. The first main line of argument focuses on the discourse of racism. The second line of argument examples more social aspects of economic domination and other material gains. Another trend in studying colonialism has been a psychic component moves beyond the colonized persons' feelings of marginalization (Bhabha 1994, Fanon 1968, Steinmetz 2003). The tussle of colonizers instructing all the while learning from those that they colonize complicates the ideology of imperialism versus the practice of colonialism. As noted, modern colonialism used annexation treaties as a technique to seize control when if the

colony had resources or if the one group was antagonistic towards the other and could be overtaken. An aspect of colonialism that remains important is the cultural distance or difference (Steinmetz 2003, 42). Modern states, including colonial sites, require being recognized of their existence. Changing local customs of the colonized is not necessarily considered racial but an aspect of alterity (Chatterjee 1993, Steinmetz 2003). The Europeans had suspicions towards Asians, Africans, and others that portrayed the Chinese as double-dealers who had a forked tongue (*Doppelzüngigkeit*).

Racial motivations of colonialism are not the dominant rationale for states that use legal agreements to annex a territory. Since Europeans did not view Asia as in a state of anarchy but rather stagnation (Westlake 1894, Howe 2008, 217), the nature of mimicry and hybridity, where the Europeans went to Asia and adopted Asian customs, was more alive there than in South America or Africa. The logic of Orientalist discourse is plagued with internal contradictions. The cruelty witnessed on the grounds of colonial sites may relate to racism but from my legal analysis, the legal language abates these tensions. Naturally, individual persons write laws. And if laws were written in an era when rhetoric for racial hierarchies and against miscegenation (Le Bon, Gobineau) gained influence then biases will exist (Young 1995). Private conversations among diplomats capture what law and formal diplomatic acts do not.

The mental attitude, i.e. the acceptance of servitude, plays a more central role in cultural studies' assessment of colonialism (Said 1978, Bhabha 2003, Howe 2008). In the 19th century, meanings of civility were being destabilized. Bhabha draws attention to the dimensions of mimicry and hybridity where colonial powers disavows and acknowledges differences constantly (1993). Often, discussion on colonialism examines

the phenomena as “homogenous and all-powerful” (Howe 2008, 222), but colonial rule has its variants. Colonial rule can be direct and indirect (Mamdani 1996). It may also be assimilative or associative (Wright 1991). The most extreme form of assimilation would be an end to colonialism, according to Sartre (Steinmetz 2003, 47). But influences seep out both ways. Examples in Latin America, Asia, and Africa attribute to the differences. Taiwan and Korea accepted Japanese colonial rule quite differently (Rubinstein 2007, Shin and Robinson 1999).

Germany as a colonizer also exercised its power differently. Germany had three distinct forms of native policies. In Southwest Africa, the Germans exercised compulsory power over the Africans, massacring those that did not fully support plans for assimilation. In the Samoas, the Germans practiced more indirect rule and had native policies align with existing customs. The Germans viewed China as an empire in decline. Their governance of Qingdao can be described as an indirect rule but the Germans promoted apartheid-like living situations and even micro managed Chinese theatrical productions to specify the size and cleanliness of Chinese homes (Steinmetz 2003, 49). Steinmetz examined colonialism beyond the culturalist vs. materialist lines and further teased out how elements of both steeped into several layers of thinking especially for the colonizers on the ground.

Economic Colonialism

Even though Fieldhouse’s (1981) concerns included the economic calculations of colonialism, his writings did not avoid a discussion of race. Fieldhouse, a conservative historian of colonialism, noted that empire building was not from jingoism or economic calculations (Howe 1998, 213). Colonialism, Fieldhouse claimed, was the “last resort” to save the peripheral states from destroying themselves. He however does not discuss how

the Europeans acquired colonial territories in the first place (Cain 1982) and the omission avoids the analysis the economic cost accrued to seize the territories. The terrain of current post-colonial theories is marred with dense and often murky writing. The complexity of the situations the authors discuss lends themselves to the style. However, Fieldhouse used precise language to dismiss the “theory of capitalist imperialism” (Howe 1998, 215). He defended colonialism as a natural stage of progression (Howe 1998).

The strong economic perspective for colonialism by Marx assumed that colonialism was an inevitable stage in global capitalism (Agawu 1995, 12). Marxist scholars would assess that economic motivations were behind colonialism. Marx published in 1850 how the Opium War between China and Great Britain was for British economic gain and the extension of the practice of mercantilism. The cultural debates in colonialism still use elements of Marx, specifically alienation and oppression, to further a link that culture has to economics. J.A. Hobson (1938) argued against the primacy of economic motivations for colonialism.

From 1492 to 1700, Spanish colonialism established a phase of mercantilist colonialism in Latin America (Mahoney 2010, 50). Characteristically, pre-existing settlements were uprooted and new political, economic, and social institutions were enforced. Mercantilist policies generally represented instances where nations were interested in short term gain to meet immediate consumption needs (Mahoney 2010, 21). In sum, mercantilist regimes sought national self-sufficiency, had restrictive state regulations for trade, ownership, and economic participation, and maintained status-group hierarchies based on patrimony and economic elites (Mahoney 2010, 21). Mahoney

linked the dangers of short-term goals during the colonial period compounding towards poor economies centuries later.

In comparison to mercantilism, liberal colonialism focused on long-term investments. Under a liberal regime, state actors were allowed to control their own economic resources. The regime promoted international comparative advantage, created fewer restrictions on trade, ownership, and economic participation, and acknowledged a market-based, capitalist elite class, especially in Latin America from 1700 to 1808 (Mahoney 2010, 21). Liberal aims of the Spanish empire created economic colonial centers and economic elites who controlled the commercial interests. Later permutations of liberalism, such as neoliberal institutionalism furthered cross-cultural understandings in the interest of trade.

Decolonization

Strang's (1990, 1991) study of decolonization as a global process utilized the pre-existing nation-state building model. If the nation-state model transferred from Western powers to their dependencies, the change in ideology came from liberal Western education. Claiming dependent territories in the first place came via Europeans occupying non-Western lands as unsettled territories. Bilateral treaties of conquest were also used to claim territories (Strang 1991, 433). New territories were ceded, changed governance, or gained independence via treaties. The temporal analysis of the number of dependencies reported that from 1500 to 1987 there were 165 dependencies that became sovereign. Rivalries between European states did not help nations reap the rewards of political expansion (Strang 1991, 161). Instead, the competition lent disputed polities towards recognition rather than annexation. Studying colonialism from the perspective of the colonizer and the colonized provide a multivalent view of law.

Conclusion

Treaties initiated foreigners to enter new countries. The promulgation of trade and legislation challenged existing cultural norms for individuals. The combination of law, history, economics, and race shaped how different nations reacted to treaties. In the next chapter, I discuss the overall trends of economic, diplomatic, social, and political provisions formed around the 1860s. At least on paper, treaties generally agreed to serve mutually beneficial goals.

The case studies of China, Japan, and Korea discuss how the intrusion of an external set of legal norms jar the flow of business and social conduct in other countries. The establishment of economic codependency maximized how a nation could be favored by another in future diplomatic settings. Japan's reaction to the "unequal" treaties of the 1850s yielded the dismantling of regional power structures. The steps towards annexation in the 19th and early 20th centuries highlighted the presence of international law and its efficacy in changing official goals and ideologies for the state.

CHAPTER 2

EMPIRICS OF EMPIRES: STUDY OF REGIONAL DIFFERENCES OVER TIME

Treaties chronicle the dialogue that encompasses military, economic, political, and diplomatic issues between two nations. When examining treaties for historical research, setting the scope for the study becomes a challenge. Several types of documents named acts, agreements, armistices, cartels, concordats, covenants, conventions, declarations, protocols, or truces may be accepted in the same class as treaties (Foulke 1918, Bederman 2001). Principally, the underlying component of a treaty remains that two or more sovereign nations are involved in its signing.

The contractual and legislative aspects of treaties made them a powerful tool for studying inter-state relations. Conceptually, treaties are similar to contracts (C. Mahoney 2007), however treaties lack the overarching enforcement structure that contracts between two persons within one country would have under state law. National legislations changed as a result of treaties (Bederman 2001).

Treaty Selection Process

Over two hundred historically relevant treaties from Asia, Europe, North America, and South America were examined for the dataset. Before 1919, treaties were not systematically compiled; so several treaty volumes and compilations were acquired for the tabulations. After 1919, global record keeping improved with the League of Nations Treaty Series (LNTS) and the United Nations Treaty Series. Conducting research on historical treaties written before 1919 required locating volumes usually organized by a nation's foreign secretary's office. The treaties I use were drawn from several volumes including *Treaties, conventions, international acts, protocols and*

agreements between the United States of America and other powers, 1776-1909 (1910), *Treaties and Conventions between Corea and Other Powers* (1919), *Hertslet's commercial treaties. A collection of treaties and conventions, between Great Britain and foreign powers* (1907), *Treaties and conventions between the empire of Japan and other powers* (1899), *Treaties, conventions, etc., between China and foreign states* (1917), *Nouveau recueil général de traités et autres actes relatifs aux rapports de droit international* de G. Fr. de Martens,⁵ and treaties found online through sources such as Google books, archive.org, and the Yale University Law School's Avalon Project.

I used the volumes mentioned above to select exhaustively treaties involving China, Japan, and Korea. I started with China's treaties with other nations in the 19th century. Then I extended my cases to examine Japan and Korea's treaties with Western countries. After collecting data for China, Korea, and Japan, I used treaties that European countries signed with post-colonial Latin American states as a comparison category to the treaties that Europeans signed with Asians. Several treaties between Latin American nations and the United States were found on the Avalon Project website. Through additional document searches, other full-text treaties signed among Western nations were examined. Treaties published from the late 18th century and the 19th century was not widely available through supra-national organizations. Because the treaties in my dataset predate the League of Nations and the United Nations, private publishers were responsible for organizing the volumes' contents. By comparing several volumes organized around the treaties specific to China, Japan, and Korea, I coded unabridged

⁵ De Martens organized treaties dating back to 1761. For the years that I focus on, de Martens assembled over 35 volumes of treaties from 1876 to 1910 and 40 volumes from 1909 to 1944. An exhaustive codification of all treaties in de Martens' volumes is planned for future research.

versions of the treaties. Nearly all treaties involving China, Japan or Korea from the 19th and early 20th centuries was included in the dataset.

I selected additional documents from the first four volumes of de Martens's collection of treaties to include more treaties between European and Latin American states. Representative samples of treaties from European, American, and Latin American countries were included to reflect the diplomatic patterns of the 19th century. Documents from this period uploaded onto Yale University law school's Avalon project website and de Martens's volumes that stood out as treaties were coded into the dataset. A volume dating back to the 18th century, de Martens categorized treaties thematically into basic types such as arbitration, extradition, and delimitation. I retained some of his specifications but also noted the distinction between friendship treaties and commerce and navigation treaties. Many of the non-Asian treaties included documents pertaining to the United States. But more than the half of treaties in the dataset involved non-Asian nation-states.

Organization of Selected Treaties

The treaties' years ranged from 1783 to 1912. I surveyed a few treaties from the 15th and 17th centuries but they were excluded so that the discussion could focus on 19th century bilateral treaties. The treaties were written in over fourteen different languages. I examined 235 treaties written across seven region-based dyads which were Great Powers and Asian nations, among Great Powers, among Asian nations, Great Powers and post-colonial Latin American states, among Latin American states, Latin American states and Asian nations, and other polities including Hawaii, were also analyzed.

I assessed several key political, economic, diplomatic, and social provisions and described diplomatic representation, commercial exchanges, social conduits, criminal

actions, and cultural exchanges. Initially, I searched for 64 key provisions or characteristics found in the treaties. From the 64 items, I chose 29 significant provisions that highlighted regional and periodic symmetries.

Symmetry as used throughout refers to provisions' outcomes where both sides benefited equally from the agreement. Outcomes were symmetric when both countries received and offered like conditions. The provision for consular representation was symmetric if both countries sent a diplomat to the other's country and asymmetric if only one side sent and the other hosted the diplomat. Reciprocity like symmetry also referred to times when both sides complied with the conditions of the stated provision. For instance, provisions for extraterritorial jurisdiction stated whether citizens of either country residing in the other's country would be tried under criminal laws according to the national laws of their citizenship. In a non-reciprocal case, a criminal would be tried under the country's law where the crime occurred.

Description of Region-based Dyads

Treaties engaged two or more sovereign nations. The two sovereign nations were either from different regions or the same region.⁶ I specified 7 possible treaty partner pairings. They were (1) Asian with Great Power, (2) intra Great Power, (3) intra Asia, (4) Great Power with Post-colonial Latin American states, (5) intra Post-colonial Latin American states, (6) Asian states with Post-colonial Latin American states, and (7) other treaty pairings of interest. I focused on Asian and European treaty relations. The treaties

⁶ Also, I included 4 multilateral treaties. In 3 out of 4 multilateral cases, Germany, Austria-Hungary, Belgium, Spain, the United States, France, Great Britain, Italy, Japan, Netherlands, and Russia were on one side writing treaties with China in 1901, 1905, and 1912. The other multilateral treaty was between the United States and a coalition of post-colonial Latin American states, namely Chile, Costa Rica, Cuba, Ecuador, Guatemala, Mexico, Nicaragua, Peru, and Venezuela, in 1905. Even in the case of multilateral treaties, one side of the contracting party was all from one region, which was either Europe or Latin America.

between Asian and European nations, which included the United States, comprised largest pair grouping. 100 out of 235 treaties were treaties between Asian and European nations. Of these treaties, 41 out of 100 treaties signed were friendship, also known as the amity and commerce, treaties. In additional comparison cases, I observed treaties within Great Powers that involved activity among European states, the United States, and Russia.⁷ 19 out of 235 (8%) treaties were written among Asian nations. European and post-colonial Latin American states wrote mostly extradition and arbitration (18 out of 30) treaties. 12 treaties were signed among post-colonial Latin American states. There were 8 treaties between Latin American and Asian states; there are 3 other treaties with a different pairing arrangement in the dataset.⁸

Table 1. Distribution of Treaties by Region-based Dyad

Region-based dyad	Count
1) Great Powers and Asian states	100
2) Intra Great Powers	63
3) Intra Asia	19
4) Great Powers and Post Colonial Latin American States	30
5) Intra Post-colonial Latin American States	12
6) Post-colonial Latin American and Asian States	8
7) Other Treaties of interest	3

Years, Decades, and Periods

The treaties ranged in years from 1783 to 1912. The years were further transformed into 7 periods called binned decades to isolate time spans of 12 to 20 years. The years were divided into 1783 to 1799, 1800 to 1820, 1821 to 1840, 1841 to 1860,

⁷ 12 out of 62 within European treaties were commerce and navigation treaties and 20 out of 62 within European treaties were about arbitration, furthering trade goals.

⁸ The 3 treaties were the 1805 Treaty of Tripoli between the United States and Tripoli, the 1871 Treaty of Amity and Commerce between the United States and Hawaii, and the 1875 Commercial Convention also between the United States and Hawaii.

1861 to 1880, 1881 to 1900, and 1901 to 1912 time spans. Less than 6 treaties were written within each of the first 3 binned decades, which were from 1783 to 1840.

Figure 2. Chart of Treaties Signed

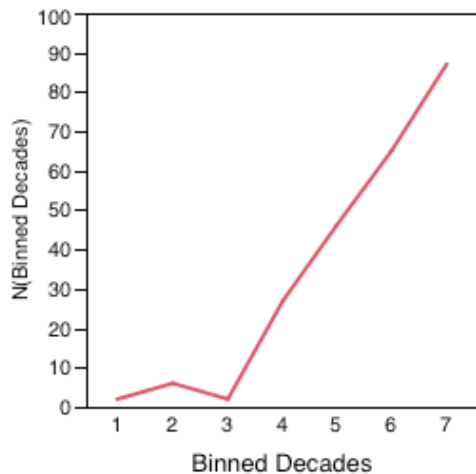


Table 2. Distribution of Treaties for Binned Decades

Binned Decades	Count
1) 1783 to 1799	2
2) 1800 to 1820	6
3) 1821 to 1840	2
4) 1841 to 1860	27
5) 1861 to 1880	46
6) 1881 to 1900	65
7) 1901 to 1912	87

Treaty signing ballooned after 1841. Nearly 96% of the treaties presented here were signed after 1841. The number of treaties per decade increased over time. Beginning with 1841, the number of treaties sampled increased from 27 to 46, then from 65 to 87. Over time, the median year of 1895 reflected the emerging importance of treaties.

Time affected treaty types in that the specific types of treaties; particularly extradition, arbitration, delimitation, and annexation treaties became more standardized after 1861. 1885 stood out as the keystone year for international relations. The conclusion of the Berlin West Africa conference in February 1885 signaled a new era for expressing colonial interests among Europeans. 1885 was also the mean year for the treaties in the dataset. The years of 1783 to 1884 were marked as pre-1885 and from 1885 to 1912 are labeled post-1885. 93 treaties were signed before 1885, and 140 treaties were signed after 1885.

Descriptive Statistics

Key treaty provisions included the most favored nation clause, consular representation, foreign residence, local authority, historical legacy, previous contracts, extraterritorial jurisdiction, and disaster relief. Several descriptive variables of interest included the mean months requested for ratification, which was usually about 6 months, and mean months when a meeting to renegotiate or terminate the treaty can be established, which was usually 7.5 years. I used the number of articles, which were about 14 articles per treaty, to gauge the length of the treaties. These variables were some of the few variables that nearly every treaty provided information for. Additional descriptions of the data informed the ways in which regions and time mattered.

To study variation across regions in treaty outcomes, I sorted the treaties by possible combinations of treaty signers according to regions. Differences based on regions were dually observed over time. The chi-square (X^2) test is a nonparametric and distribution-free test used for data with nominal independent and dependent variables. The chi-square coefficient is based on the strength of the relationship between two variables and sample size. The chi-squared tests of variance with additional Monte Carlo simulations used to correct for cells with less than 5 observations indicated how outcomes for variables such as extradition and the most favored nation clause had differences according to regions. The cross-tabulations of nominal variables yielded the approximate significance levels for symmetric measures. The tests of significance included here are the chi-square based contingency coefficient and the approximate significance. The contingency coefficient was used because the matrix was larger than 2 x 2.

The chi-square based measure of the contingency coefficient, C , is understood as $C = \text{SQRT}[X^2/(X^2 + n)]$.⁹ C is preferable for tables of 5 by 5 or larger and is the appropriate test for nominal variables. Significance levels for C are like those for chi-square measures. A perfect relationship is defined as weak monotonic, and a null relationship means that the variables have statistical independence in accordance with C . In terms of symmetricalness, C is symmetrical which means that it does not matter which column is independent or not. C approaches 1 if the two variables have equal marginals. And C gets closer to 1 when the number of rows and columns increases. So to interpret C , we can examine how the approximate significance can remain low to show the significance of the relationship between variables. In SPSS, the Contingency Coefficient, C is adjusted as C^* in that C^* is a percentage from C over all maximum value of C . So if C^* is closer to 1, the relationship between two variables is stronger than if C^* is closer to 0.

Hypotheses

Regional differences. In this chapter, I explore 2 main hypotheses. First, I discuss the significance of geography and how cultural differences are rooted in geography. As Mahoney (2010) noted in *Colonialism and Postcolonial Development: Spanish America in Comparative Perspective*, geography on its own cannot explain disparate inequalities. Although Mahoney evaluated differences based on levels of development, my inquiry on legal asymmetries found in treaties also examine geography

⁹ C can also be expressed in terms of phi. $C = \text{SQRT}(\phi^2 / (1 + \phi^2))$. Phi, ϕ , a chi-square based measurement of association that eliminates the sample size by taking the chi-square and dividing it by n ($\phi = \text{SQRT}(X^2/n)$). Phi is a symmetrical measure in that it does not matter which column is the independent variable. Phi does not range from 0 to 1. For tables larger than 2 by 2, the value of phi could go over 1. Phi is sensitive to marginal distributions.

but acknowledge how cultural differences can be bridged for improved diplomatic relations. Economic development beckons the question of advantages in the international system. If industrial advantage allowed the Europeans to conquer much of the world, then how would geography proffer economic success? Propinquity rarely bred friendly relations since rivalries, conflict over resources, and border disputes resulted from closeness.

Geography represented moreover the differences in levels of acceptance for international laws felt in Europe versus Asia. The distinctions based on economic development or political regimes may not wholly capture how treaty relations differed. Since nations of comparable levels of development may have had unfriendly relations, perhaps regional differences attributable to cultural or civilizational vagaries may be expected.

Symmetry versus asymmetry derives from the study of unequal treaties. Why Asian states regarded the treaties of 19th century as unequal is at least twofold. First, the Asians did not want to engage in free trade and the involvement with the treaties was coerced. Second, the terms outlined in the texts of the treaties were remarkably one-sided. And focusing on the internal asymmetries, where a tit for tat relationship did not occur, conveyed unequal treaty relations.

Hypothesis 1: Asymmetries in treaty outcomes will differ by region. Treaties between

Asian and European states would be more asymmetric than treaties among European states.

Time-dependent Symmetry. Institutions may tend toward symmetries over time since more resources will be disproportionately distributed to dominant actors (Mahoney

2010, 16). Many legal scholars espoused scientism in the 19th century and the writing reflected the positivistic turn. So as years had passed, less powerful European nations also vied for trading rights with Asian states. Without military prowess to induce heavily one-sided treaties, other European nations formulated slightly more equivocal treaties. In certain cases, European and Asian states benefited mutually. The linguistic register of the treaties become more standardized and favor similarly worded passages. Furthermore, the legal status of the nation-states improved from unrecognized to sovereign polities. The idealized notion of sovereign equality may have encouraged more symmetric outcomes in treaties.

Hypothesis 2: Treaty outcomes became more symmetric over time. Treaties written after 1885 will be more symmetric than treaties written before 1885.

Types of Treaties

I explore 7 region-based dyads of treaty signers, 7 binned decades, and 7 types of treaties. Treaty types featured key topics. The 7 treaty types were (1) peace, (2) commerce and navigation, (3) friendship, (4) extradition, (5) arbitration, (6) delimitation and protectorate, and (7) consular plus other treaties.

Table 3. Distribution of Treaties by Type

Types of Treaties	Count
1) Peace	17
2) Commerce and navigation	37
3) Friendship	64
4) Extradition	23
5) Arbitration	33
6) Delimitation and protectorate	24
7) Consular conventions and other	37

17 out of 235 treaties were peace treaties that were signed after wars. 37 out of 235 treaties were commerce and navigation treaties; 64 out of 235 (27%) treaties were friendship treaties, which were treaties signed at the initial meeting of two contracting parties; 23 out of 235 treaties were extradition treaties, which dealt with the release and capture of criminals; 33 out of 235 treaties were arbitration treaties, which protected parties from economic losses in foreign markets; 24 out of 235 treaties were delimitation treaties, which dealt with borders and territorial possessions; and 37 out of 235 treaties were consular conventions, pilotage, public health or other treaties of interest.

Table 4. Contingency Analysis of Region by Type of Treaty

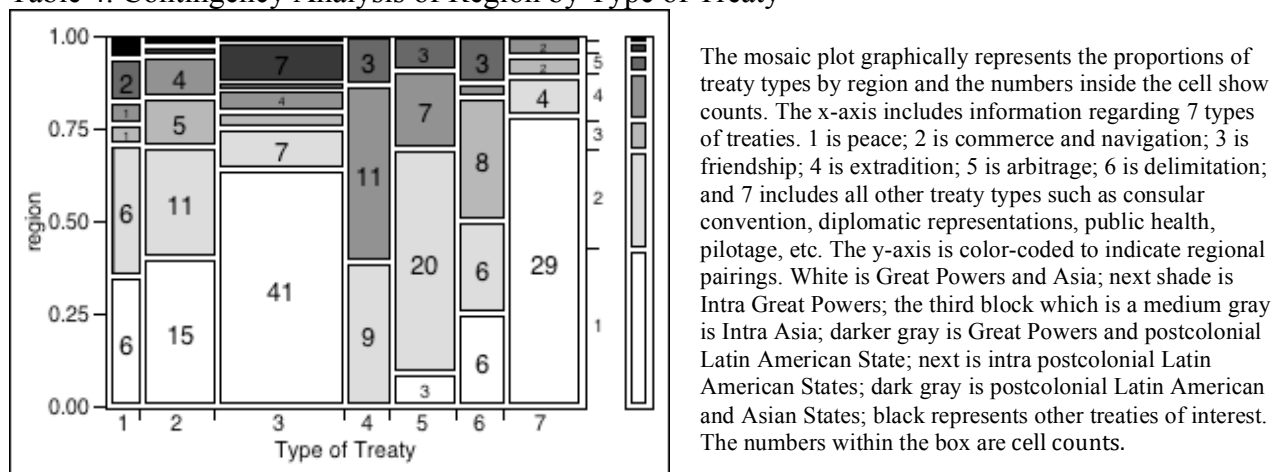


Figure 3
Region-based dyads by Type of Treaty

Count	1) Peace	2) Commerce and Navigation	3) Friendship	4) Extradition	5) Arbitrage	6) Delimitation and Annexation	7) Consular and Other Treaties
Col %							
1) Great Powers and Asian States	6 35.29	15 40.54	41 64.06	0 0.00	3 9.09	6 25.00	29 78.38
2) Intra Great Powers	6 35.29	11 29.73	7 10.94	9 39.13	20 60.61	6 25.00	4 10.81
3) Intra Asian States	1 5.88	5 13.51	3 4.69	0 0.00	0 0.00	8 33.33	2 5.41
4) Great Powers and Post-Colonial Latin American States	1 5.88	4 10.81	4 6.25	11 47.83	7 21.21	1 4.17	2 5.41
5) Intra Post-Colonial	2 11.76	0 0.00	1 1.56	3 13.04	3 9.09	3 12.50	0 0.00

Latin American States							
6) Post-Colonial Latin American and Asian States	0 0.00	1 2.70	7 10.94	0 0.00	0 0.00	0 0.00	0 0.00
7) Other pairings of interest	1 5.88	1 2.70	1 1.56	0 0.00	0 0.00	0 0.00	0 0.00
Total Row %	17 7.23	37 15.74	64 27.23	23 9.79	33 14.04	24 10.21	37 15.74

The percentages under the columns for the 7 types of treaties represented column percentages. For instance the 7 friendship treaties signed between Post-Colonial Latin American and Asian States constituted 11% of all friendship treaties. The last row included row percentages.

The mosaic plot above classified certain treaties by specific regional groupings. The proportions of red blocks are notable in the graph because many of the treaties involved Europeans writing treaties with Asian nations. For example, 41 friendship treaties were signed between European and Asian nations. The first column of the plot represents peace treaties. The second row represents treaties among European nations, etc. Table 4 (above) shows how various types of treaties represented the activities for given regions. In the inner cells, the top number represents the number of treaties and the bottom number represents the column percentages. For instance, 11 extradition treaties were signed between European and Latin American states, which made up 47% of all extradition treaties presented here. In comparison, 9 extradition treaties were signed among European states, which made up 39% of the extradition treaties. To test the statistical significance of the tabulations, I ran a Monte Carlo simulation of 10,000 iterations to find the symmetric measure's approximate significance, which was 0 at the 99% level, with a nominal-by-nominal contingency coefficient of .629. Therefore, it is highly unlikely that types of treaties were distributed purely by chance.

Peace treaties

Peace and commerce treaties existed for centuries and later additions such as arbitration, extradition, and delimitation developed in the latter half of the 19th century.¹⁰ Peace treaties served a major purpose of ending conflict. According to international law guides, peace treaties are similar to armistices, *modus vivendi*, and truces (Foulke 1918). Formally, peace treaties organized the resolution of the conflict for both sides. The treaties covered topics such as indemnities, troop withdrawals, the status of refugees, border reconfigurations, dividing resources, or political reorganizations.

Thirteen peace treaties were signed before 1885. After 1885, 4 treaties were signed. The major peace treaties examined were the 1842 Treaty of Nanjing between Great Britain and China, which was concluded after the first Opium War, and the 1895 Treaty of Shimonoseki between Japan and China. The 1895 Treaty of Shimonoseki gave Japan control over Taiwan and other territories that were Chinese possessions. As for indemnities, China paid Great Britain \$21 million dollars in indemnities after the first Opium War in 1842, but the practice of paying indemnities was removed after Japan's victory in the Russo-Japanese war in 1905. 1898 Treaty of Peace between the United States and Spain, 1904 Treaty of Peace and Amity between Bolivia and Chile, and 1905 Treaty of Portsmouth between Japan and Russia are also included in the analysis.

Commerce and navigation treaties

The commerce and navigation treaties of the 19th century covered issues such as tonnage dues, import and export rates, the most favored clause, right to employ native workers, and other issues lying beyond economics. Issues such as rights for foreigners to reside in the other's country, extraterritorial jurisdiction, and relief in case of disasters

¹⁰ The peace treaty between the Hittites and the Egyptians dated back to 1274 B.C.

filled the pages of the commerce and navigation treaties. They could be found for each treaty signing pair except in treaties among post-colonial Latin American states. These treaties were common after the 1840s as well. 16 commerce treaties were before 1884 and 20 were after 1885.

Treaties such as the 1842 Webster-Ashburton Treaty between Great Britain and the United States, 1873 Treaty of Commerce and Navigation between Great Britain and France, 1882 Regulations for Maritime and Overland Trade between China and Korea, and the 1902 Commercial Treaty between Great Britain and China were few examples of commercial and navigation treaties included in the analysis. Commerce was at the forefront of many treaties in treaties that were later specifically noted as treaties of amity and commerce, arbitration, pilotage, immigration, and delimitation.

Friendship treaties

Friendship treaties were often the first treaties signed by two nations during the 19th century. Friendship treaties, also known as amity and commerce treaties, reflected the historical relations between Great Powers and Asian nations. The amity and commerce treaties dominated the proportion of treaties signed from 1841 to 1900. This feature attested to the large number of interactions between Great Powers and Asian nations included in the dataset. 62 out of 64 friendship treaties were signed from 1841 to 1912. The friendship treaties steadily increased in count from 12 to 17 to 22 from 1841 to 1900 but from 1901 to 1912, the number dropped to 11 treaties. 35 friendship treaties were signed before 1884 and 29 were signed after 1885. The friendship treaties included some economic provisions such as opening up treaty ports and often made arrangements for diplomatic officers to establish posts in recently contacted nations.

Extradition treaties

Extradition is a process where one nation surrenders an alleged criminal or criminals to another nation for criminal prosecution or sentencing (Stein 2011). Extradition, an issue discussed in treaties as early as the 1689 Treaty of Nerchinsk between Russia and China, became more systemically discussed in separate treaties by the 1870s. Extradition treaties were common between European and or Latin American states. 9 of out 23 treaties were signed among European states; 11 of out 23 were signed between European and Latin American states; 3 out of 23 treaties were signed among Latin American states. All extradition treaties in the dataset were signed after 1861. The 23 extradition treaties in the dataset were signed from 1870 to 1908. 12 extradition treaties were signed before 1884 and 11 were signed after 1885. The trend inferred to ways in which the treaty system became complex with the increased specialization and typologies.

Compared to peace, friendship, and commerce treaties, the extradition treaties added later into the repertoire of international treaties. The extradition treaty exemplified the increasing complexities of the treaty system in the late 19th century. Though earlier treaties mentioned procedures for extradition in treaties prior to 1861, devoting a treaty exclusively for extradition occurred in the latter third of the 19th century.

The 1873 Extradition Treaty between Great Britain and Austria-Hungary, the 1896 Extradition Convention between the United States and Argentina, which was ratified in 1900, and the 1908 Extradition Convention between the United States and Portugal had similar formats in terms of listing criminal offenses that referenced 12 to 20 specific offenses including homicide, arson, counterfeiting, burglary, rape, abduction, embezzlement, revolt, piracy, obstruction of railroads, and slave trading. In article 6 of

both the 1873 and 1900 treaties, extradition was not granted in cases where “for a crime or offense of a political character nor for those connected therewith” (Avalon 2012). Extradition treaties developed protections for political dissidents. The similarities found in these treaties that involved different nations decades highlights the standardization in language, form, and style that patterned the treaties. Similarities of the treaties’ texts became more prevalent over time. As the treaty writing system proliferated, the types of treaties increased while the content and internal organization of certain treaty types became more standardized (Strang and Bradburn 1999).¹¹

Arbitrage treaties

From 1901 to 1912, there were 85 treaties where 40% of them were arbitrage treaties.¹² 34 arbitrage treaties from 1901 to 1912 included key provisions for economic trade that occurred transnationally. The treaties ensured smooth transactions for business in different financial markets. The 1899 Pacific Settlement of International Disputes in Hague established in Title 4 a protocol for such types of binding commercial agreements. And 20 out of 33 arbitrage treaties involved Western nations. The arbitrage treaties comprised more than a third (33 out of 87, about 38%) of the treaties signed after 1901. For instance, the 1902 Treaty of Arbitrage between Chile and Argentina and the 1909 Arbitration Convention between the United States and Austria-Hungary mentioned the 1899 convention. However, all parties on both sides agreed to appoint delegates to discuss issues that Hague agreement did not address (American Society of Law 1907,

¹¹ Strang and Bradburn’s 1999 research on HMO legislation discussed how the language of the legislation looked similar across states within the United States. Strang and Bradburn related their work more towards wordings of documents but the concept of forming symmetries around policy is instrumental in studying institutions.

¹² Arbitration lowered the risk of economic losses while transacting within foreign markets and not surprisingly, the 1899 convention in Hague which standardized procedures for arbitrage led way for the ratifications of several arbitrage treaties.

290). The 1899 Hague convention patterned the format of future arbitration treaties, further standardizing treaties over time.

Treaties of delimitation or annexation

Treaties of delimitation or annexation managed borders, formalized land purchases, and made arrangements for territorial control. Delimitation was another specialized treaty that emerged in the latter part of the 19th century. Only 10% (24 out of 235) of the treaties in the dataset were delimitation treaties. 5 out of the 24 treaties were signed from 1861 to 1880, and 14 out of 24 treaties were signed from 1901 to 1912. Notable treaties from this typology included the 1905 Protectorate and 1910 Annexation treaties between Japan and Korea, which bore significantly regarding sovereignty.

Table 5. Logistic Fit of Type of Treaty By Year
Whole Model Test

Model	Log Likelihood	DF	Chi-Square	Prob>ChiSq
Difference	64.27	6	128.54	<.0001*
Full	373.42			
Reduced	437.69			

Year did have statistical significance for the types of treaties signed among nation-states. The chi-square probability is significant at the 99% level meaning that the year had an effect on type of treaty signed. Arbitrage treaties were common after 1900 while friendship or amity and commerce treaties were more prominent in the late 19th century.

Table 6. Contingency Analysis of Type of Treaty by Binned Decades

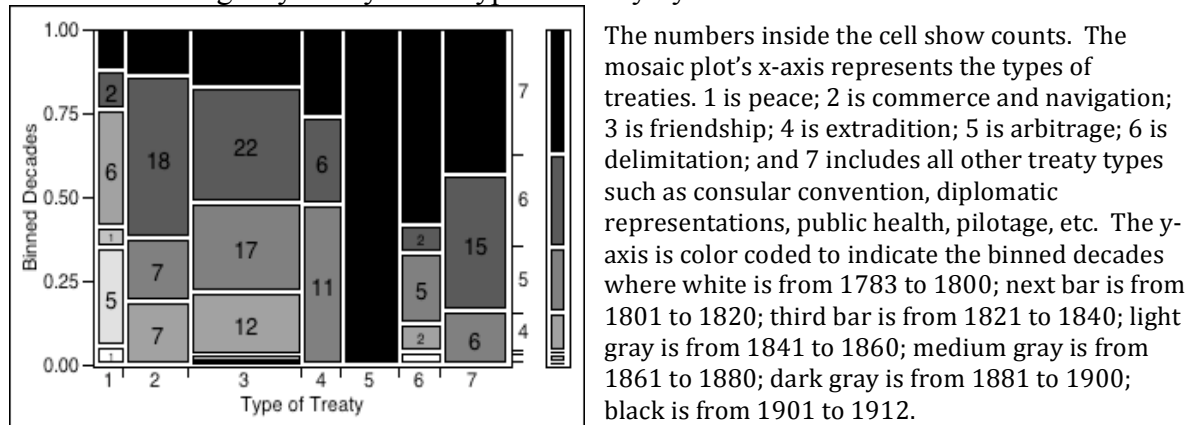


Figure 4¹³

Binned Decades By Type of Treaty

Count Col %	1) Peace Col %	2) Commerce and Navigation	3) Friendship	4) Extradition	5) Arbitrage	6) Delimita- tion and Annexation	7) Consular and Other Treaties
1) 1783- 1800	1 5.88	0 0.00	0 0.00	0 0.00	0 0.00	1 4.17	0 0.00
2) 1801- 1820	5 29.41	0 0.00	1 1.56	0 0.00	0 0.00	0 0.00	0 0.00
3) 1821- 1840	1 5.88	0 0.00	1 1.56	0 0.00	0 0.00	0 0.00	0 0.00
4) 1841- 1860	6 35.29	7 18.92	12 18.75	0 0.00	0 0.00	2 8.33	0 0.00
5) 1861- 1880	0 0.00	7 18.92	17 26.56	11 47.83	0 0.00	5 20.83	6 16.22
6) 1881- 1900	2 11.76	16 48.65	22 34.38	6 26.09	0 0.00	2 8.33	15 40.54
7) 1901- 1912	2 11.76	5 13.51	11 17.19	6 26.09	33 100.00	14 58.33	16 43.24
Total Row %	17 7.23	37 15.74	64 27.23	23 9.79	33 14.04	24 10.21	37 15.74

The mosaic plot depicts proportions. 27% of all treaties in the dataset were friendship treaties and 96% of them were written between 1841 and 1912. Also all of the arbitration treaties in the dataset were signed from 1901 to 1912, which signals the increasing complexities of the international system for treaties.

¹³ Although treaties are labeled as the x-axis, the graphical representation of the mosaic plot is the reverse based on the fit y by x input in the JMP package.

Other treaties of interest

The last treaty type included public health, immigration, consular conventions, pilotage, and other sorts of treaties. The category contained several types of treaties that discussed multiple and uniquely specified issues. Treaties signed later in the 19th century grew increasingly complex and did not fit into the other 6 treaty types previously mentioned. Also multilateral treaties proliferated so that one treaty could serve the role of multiple bilateral treaties. The 1905 Convention of Public Health between the United States and Chile, Costa Rica, Cuba, Ecuador, Guatemala, Mexico, Nicaragua, Peru, and Venezuela was an example for a complicated and difficult to categorize treaty in the dataset. 7 treaties were signed before 1884, and 30 were signed after 1885. 6 out of 37 treaties in the other treaties of interest category were signed from 1861 to 1880; 15 out of 37 were from 1881 to 1900; 16 out of 37 treaties were signed from 1901 to 1912.

Results from the Analysis of Key Provisions

The first hypothesis states that the regions affect whether the provisions in the treaties were symmetric or not. The results supported the hypothesis because asymmetries were stark in treaties between Europeans and Asians as were treaties among Asians. Treaties between Latin Americans and Asians appeared less asymmetric and the small sample of the treaties being from the pairing may have affected the results. The treaties between Latin American and Europeans were more symmetric because elites of European descent adjudicated the treaties. The prolonged period of colonialism impressed key European cultural legacies in terms of religion and political organizations in Latin America. The similarities yielded more symmetric results. Treaties among Europeans appeared more symmetric for key provisions because the “family of nations” principle applied mainly to other European nations.

Economic variables such as most favored nation clauses and disaster relief stress how regions affected the ways in which nations were treated differently. Across regions the outcomes for most favored nation, disaster relief, and consular representation variables were statistically significant. By years, the disaster relief variable is statistical significantly with the chi-square probability of .025, which is a low likelihood of the distribution occurring by chance. MFN and consular representation were less affected by time.

Table 7. Symmetry of Significant Treaty Variables

Region-based dyad	MFN % reciprocal	Disaster relief % reciprocal	Consular Representation % reciprocal
1) Great Powers and Asia	63 (24 out of 38)	33 (13 out of 40)	77 (51 out of 66)
2) Intra Great Powers	100 (7 out of 7)	83 (5 out of 6)	95 (18 out of 19)
3) Intra Asia	50 (1 out of 2)	80 (4 out of 5)	57 (4 out of 7)
4) Great Powers and Post-colonial Latin American State	100 (5 out of 5)	57 (4 out of 7)	100 (8 out of 8)
5) Intra Post-colonial Latin American State	100 (2 out of 2)	0 (0 out of 1)	100 (2 out of 2)
6) Post-colonial Latin American and Asian States	100 (7 out of 7)	100 (3 out of 3)	100 (8 out of 8)
7) Other Pairings of Interest	100 (2 out of 2)	100 (1 out of 1)	100 (1 out of 1)
Approximate significance (contingency coefficient)	.000 (.43)*	.002 (.38)*	.000 (.47)*
TOTAL (N=235)	63 out of 235	63 out of 235	111 out of 235

The Economic Variables

Most-Favored Nation Clauses

The MFN clause was a common feature of 19th century bilateral treaties. The MFN clause can be illustrated as such. In this example country A signs a treaty with

* Codes 3 and 4 were combined to represent the reciprocal claim.

country B, where country B is granted MFN status. A year or two later country A signs a different treaty with country C where country C negotiates better terms in an aspect such as tariff, duties, or other rates, and is granted MFN status. Then country B without having to renegotiate the treaty with country A receives the better rate. Country A without having been given mutual MFN status suffers from the conditions of the MFN clause. Historically, if Great Britain signed a treaty with China that granted Great Britain MFN status and years later the United States happened to negotiate a better import rate or tariff with China. Then without having to sign a new treaty, Great Britain enjoyed the better rate that the U.S. negotiated. Great Britain would have no need to renegotiate directly with China. The privileges enjoyed via the MFN clause could be valid for both parties if, for instance, Great Britain and China signed onto a treaty where both parties were granted MFN status. Bilateral treaties of the 19th century focused on the disparities in economic status that the most favored nation treatment created for East Asian nations. The most favored nation clause (MFN) dated back to the early 11th century. It was a fluid and relative standard, most commonly found in commercial treaties. It promoted benefits such as low tariffs to ensure frequent economic exchange between two states.¹⁴

¹⁴ Historically, the MFN clause can be traced back to the 11th century Europe (Newcombe and Paradell 2009). A treaty between England and Burgundy dating back to August 17, 1417 also used the MFN clause to grant each other rights to use ports in the others' domain. MFN clause refers mostly to trade treaties and was developed in the 17th century for diplomatic negotiations. The clause can be simplified to indicate that the contracting parties agree in respects regarding "commerce and navigation, any privilege, favor, or immunity which either grants to a third state shall be granted to the other" (Hornbeck 1909, 398). The "most-favored-nation" was mentioned in a trade treaty between Denmark and the Hanse cities (article 6) signed on August 16, 1692. Early international treaties between the United States and France on February 6, 1778 also included the MFN clause. The U.S. granted France a most favored nation status for the equivalent in return (Hornbeck 1909, Wilson [1910] 1939). During the 18th century, MFN clauses frequently appeared in commercial treaties of Europe, and the application of the clause extended beyond the commercial to political terms.

However, most favored nation clauses often profited Great Powers when they initiated trade with Asian nations. In the context of 19th treaties between Great Powers and Asian nations, the MFN clause encapsulated a realist perspective “to gain and to preserve the greatest possible advantages” for a nation (Hornbeck 1909, 397). Whether it was economically fruitful or not, Great Britain’s MFN status with China encouraged other Great Powers to write treaties with China, where they too demanded the MFN status. In theory, the practice should have profited Great Britain tremendously. The Chinese reluctantly complied with British demands that extended beyond economic extraction and the lack of cooperation from the Chinese government created barriers for trade.

Commerce motivated the signing of many treaties. The stipulations for the most favored nation clause discussed the trading rights of Western and European states abroad. 79% (50 out of 63) of all treaties that mentioned the MFN clause produced reciprocal benefits. 38 out of the 63 treaties that mentioned the most favored nation clause involved contracts between European and Asian nations. For treaties between European and Asian nations, 24 out of 38 (63%) were symmetric, which was below the general average for reciprocals benefits involving the MFN clause. In fact, all other dyads that excluded Asia but mentioned the MFN clause always resulted in symmetric outcomes. Regions were significant in that of the 15 total asymmetric outcomes for MFN in all of the treaties, 14 of them were from treaties between European and Asian nations. The one other asymmetric MFN outcome was from the 1896 Treaty of Commerce and Navigation between Japan and China. Of the 14 asymmetric treaties from treaties between European and Asian nations, 8 treaties involved China, 4 involved Korea, and 2 involved Japan.

They were signed from 1854 through 1902. MFN by region is statistically significant according to a chi-square based measure of contingency coefficient, which is .43 at the 99.9% level of significance. There is only a .1% chance that the null hypothesis of there being no relationship for regions and MFN that had been rejected in error. So hypothesis 1 is supported since regions played a significant role in MFN outcomes. Treaties between European and Asian nations were least symmetric.

Around the 1850's, fewer treaties favored European nation-states at the expense of Asian states. Observing the trends of MFN over time, the symmetric MFN clauses increased from 50% (4 out of 8) from 1841 to 1860, to 71% (10 out of 14) during 1861 to 1880, to 89% (25 out of 28) from 1881 to 1900. Article 2 of the 1778 treaty between France and the United States granted each other MFN. In 1860, the signing of the Chevalier-Cobden Treaty of commerce between France and Great Britain where both sides granted each other MFN status marked the end of MFN usage in Europe (Koskenniemi 2007). The provisions for the MFN clause verged toward symmetry and this supported hypothesis 2, which stated that symmetric outcomes are more common after 1861. The break at 1885 was a critical juncture because 68% (19 out of 28) of treaties before 1884 were symmetric and 83% (29 out of 35) of the treaties after 1885 were symmetric. However, from 1901 to 1912, 4 out of 8 treaties mentioned the symmetric outcome for the most favored nation clause.

Clandestine trade

Treaties did not frequently mention clandestine trade, which included trading opium. 46 treaties prohibited clandestine trade. Both sides disapproved clandestine trade in 22 out of 46 treaties. And for the other half of the cases, one side explicitly stated that they would confiscate prohibited goods or items from the other if the vessels had

improper paperwork. Of the 22 more one-sided treaties, 19 of the treaties were between European and Asian nations. 3 out of 22 one-sided treaties were among Asian nations. The clandestine trade and binned decades association yielded a significant result at the 99.9% level with a contingency coefficient of .39. By region, the clandestine trade variable was significant at the 99.8% level with a contingency coefficient of .34. 9 out of the 46 treaties that mentioned clandestine trade also mentioned opium. By year, the chi-square probability for the clandestine trade variable was .0011 with a chi-square value of 10.71, which means that year affected the symmetry regarding clandestine trade.

Figure 5. Opium Trade

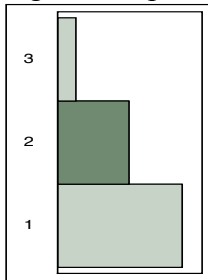


Table 8. Opium Trade

Levels	Count
1) Neither will sell to each other	7
2) Neither will sell to a third party	4
3) Opium trade permitted for a fee	1

There were 12 out of 235 total treaties that mentioned the opium trade. All 12 of the treaties were from 1847 to 1899. Notably, these treaties were signed after the Opium War (1839-1842) between China and Great Britain. Of the 46 treaties that mentioned clandestine trade, 9 of them also mentioned opium. 9 out of 12 treaties that mentioned opium were between European and Asian nations. 3 out of the 12 treaties were among Asian nations. And the treaty that permitted opium trade for a fee was signed in 1869 by China and Austria-Hungary. Opium trade was widely banned. Debates over the opium trade decreased after a few decades. Time affected the symmetric and asymmetric outcomes of provisions found in treaties.

The second hypothesis for this chapter stated that symmetries in treaties increased over time. However, when provisions were examined in terms of treaties before and after 1885, the asymmetries were still visible. So symmetries did not emerge until the early 20th century from treaties signed from 1901 to 1912.

The Diplomatic Variables

Diplomatic privileges

The open market place required diplomats to assuage arguments that arose from commercial and political matters. Consular officers were sent to establish customhouses, discuss tariffs, and negotiate work conditions. The diplomatic variables in the analysis included consular representation and diplomatic privileges. Van Alebeek (2009) described diplomatic immunity as one of the oldest rules in international law. Renaissance diplomacy dealt with the practice of Christianity in that officers would oversee whether principalities were harmoniously maintaining European Christendom (Mattingly 1955, Mishra 2010). With the expanding interest in trade, diplomats worked to maintain commercial relations.

Provisions on diplomatic privileges examined whether both countries were allowed to send diplomats to the other's country or if only one nation had the right to send an official. Only 41 treaties mentioned diplomatic privileges directly and 54% (22 out of 41) were between European and Asian nations. 90% of the treaties that mentioned diplomatic privileges agreed for both sides to have reciprocal privileges.

By the end of the 19th century attempts to standardize diplomatic immunity took place with the *Institut de Droit international* issued its *Règlement sur les immunités diplomatiques* in 1895 and further in the '*Les immunités diplomatiques*' in 1929 (van Aleebek 2009). The year for when the treaty was signed did not affect the outcome of

diplomatic privileges. The relationship between diplomatic privileges and decades yielded an approximate significance of .66 which was not low enough to reject the null hypothesis so the signing year appears to have no effect on the outcomes for diplomatic privileges. Diplomatic privileges were symmetric throughout the 19th century. Similarly, regions did not prove to affect the outcome of diplomatic privileges. The approximate significance of .29 was not low enough to prove that patterns for diplomatic privileges changed widely according to regions. However, the similarity of the privileges owed to the general normative behaviors attributed to diplomatic rights and immunities after centuries of developing the role.

Consular representation

The variables for consular representation regarded establishing diplomatic offices in foreign countries in the 19th century. The provision for consular representation had four possible outcomes to assess. Two of the four outcomes predicted symmetric possibilities, where officials from both countries were present within the other's territory, or asymmetric possibilities, where one party sent but did not receive a representative. The positions included outposts for commercial agents. 63 out of the 108 (58%) treaties between European and Asian states mentioned consular representation. 57 treaties before 1884 mentioned consular representation and 51 treaties after 1885 did. 45 out of 57 pre-1884 treaties were symmetric versus 47 out of 51 post-1885 treaties. And 58 out of 108 treaties that mentioned consular representation had representation from consuls of both countries in the other's territories.

58% of the time when consular representation was mentioned, it involved European and Asian nations. And 81% of the variables in treaties between European and Asian nations were symmetric. 85% of the results were towards a symmetric outcome.

In treaties among European nations, 18 out of 19 (95%) treaties were symmetric. The European and Latin American states had 8 treaties, which were all symmetric, that mentioned consular representation, 8 out of 8 (100%) treaties involving Latin American and Asian states were also symmetric. 6 of these 8 treaties involved Japan and 2 out of 8 treaties involved China. Treaties between Latin American and Asian nations were signed from 1874 through 1908. And 7 out of 8 treaties between Latin American and Asian nations also had symmetric outcomes for the most favored nation clause. The provisions for consular representation also supported hypothesis 1 because treaties that included Asia as a treaty partner had less symmetric outcomes for provisions on consular representation.

Again, the years affected symmetry in that both countries sent and received counselors. From 1841 to 1860, 11 out of 19 treaties were symmetric. From 1861 to 1880, 24 out of 27 treaties were symmetric. 36 out of 39 treaties were symmetric from 1881 to 1900. From 1901 to 1912, 16 out of 18 treaties were symmetric on points of consular representation. Furthermore, the pattern of increasing symmetries for the consular representation supported hypothesis 2. For consular representation, the break at 1885 was a critical marker for greater symmetries.

85% of treaties that mentioned consular representation had reciprocal benefits. In the 92 out of 108 treaties where consular representation occurred symmetrically, 82% (41 out of 50) of the treaties also had symmetric most favored nation rights. 31 out of 53 (58%) treaties had symmetric residential, 22 out of 40 (55%) treaties had symmetric local authoritarian and 32 out of 34 (94%) treaties had symmetric diplomatic privileges when consular representation was symmetric. Symmetric consular representation was stable

over time. By region and by binned decades, consular representation proved statistically significant with the approximate significance of 0 with the contingency coefficient for the region as .47 and for decades as .51 at the 99% significance level. Region and time affected consular representation. Over time, consular representation became more reciprocal for the contracting parties.

Disaster relief

Careening another countries' distressed vessels was a major economic and diplomatic concern. When ships were distressed or wrecked due to natural or mechanical disasters, procedures were set in place to accommodate the crew and vessel. Treaties before 1841 rarely included the variable for disaster relief. Disaster relief was added later in the 19th century when the treaty system became more complicated. From 1841 to 1860, 38% of the treaties allowed the Western nations to dock on the coast of Asian nations during emergencies. From 1861 to 1880, the percentage where Europeans benefited at the expense of Asians decreased to 29%, where only 2 of the 7 treaties from that time span had European-Asian treaties that benefited the Europeans. From 1881 to 1900, the 19 out of 24 treaties that mentioned disaster relief gave benefits to one side. By 1881, the mode changed towards symmetric ends where both nations were nominally allowed to use the others' coasts in cases of emergencies. From 1901 to 1912, 5 out of 6 treaties established grounds for one country to get aid symmetrically from the other. 38 treaties were signed before 1884, and 25 treaties were signed after 1885. Unlike other variables related to trade, disaster relief appeared more pertinent before the 1885 before global standardization took place. Disaster relief was significant according to regions with an approximate significance of .002 and the contingency coefficient of .38. By decades, outcomes for disaster relief were statistically significant with an approximate

significance of .00 and the contingency coefficient of .46. More relief policies were reciprocal over time.

European publicists established standards for disaster relief around the early 20th century. Helping vessels in distress evolved into an international norm with the “Convention for the Unification of Certain Rules of Law Respecting Assistance and Salvage at Sea 103 BSP 434 (Date signed: 23rd September 1910), Art. 11” (Fasoli 2010). The responsibility of the cost accrued are filed under state responsibilities. The stipulations were further mentioned in the U.N. Convention on the Law of the Sea, article 98, in 1989. Other forms of distress in the seas discussed mutiny on slave ships in 1855. Anglo-American Mixed Claims Commission dealt with possible mutinies on African vessels. Much of the law on helping vessels in distress maintained the veneer of humanitarian efforts. However, the economic costs accrued for the repairs remained contestable.

The Criminal Justice Variables

Extraterritoriality

Extraterritoriality remains a contentious topic for discussion in international law. Scholars of Asia have focused on extraterritoriality as a major conflict in cross-cultural treaties (Cassel 2012, Scully 2000). Extraterritoriality had been practiced in Asia, Europe, and Latin America. Broadly defined, extraterritoriality is where

“persons existing beyond the limits of the enacting state or nation but who are still amenable to its laws. Jurisdiction exercised by a nation in other countries by treaty, or by its own ministers or consuls in foreign lands” (*Gale Encyclopedia of American Law* 321, 2010).

Table 9. Extraterritorial Jurisdiction

Region-based dyad	ETJ % Reciprocal tried in court based on citizenship (raw counts)
1) Great Powers and Asia	16 (6 out of 38)
2) Intra Great Powers	57 (8 out of 14)
3) Intra Asia	20 (1 out of 5)
4) Great Powers and Post Colonial Latin American State	64 (7 out of 11)
5) Intra Post-colonial Latin American State	75 (3 out of 4)
6) Post-colonial Latin American and Asian States	50 (2 out of 4)
7) Other treaties of interest	0 (0 out of 1)
Approximate significance (contingency coefficient)	.000 (.43)*

Extraterritoriality dates back to the 17th century, when French legal theorist Pierre Ayrault (1583-1645) first proposed the notion. In 1708, Great Britain passed the Act Preserving the Privileges of Ambassadors after a Russian ambassador's arrest for debts in Britain caused an international scandal. Georg Friederich de Martens's *Summary of the Law of Nations* (1795) included extraterritoriality into the lexicon of international law.

Prior to the 20th century the outcomes of extraterritoriality were asymmetric and heavily favored European nationals living in Asia more so than in other geographic locations. 77 out of 235 treaties mentioned the extraterritoriality. Of the 77 treaties, 27 of them (35%) reflected a reciprocal outcome for extraterritorial jurisdiction. In treaties between Great Powers and Asian nations, 16% of the treaties were not reciprocal, which meant that Europeans were exempt from local laws while residing in Asia although local authorities were required to protect the property and possessions of Europeans. The

unequal treaties in East Asia granted foreign residents immunity from being tried under Chinese, Japanese or Korean laws. International law entangled Western and East Asian norms in the criminal justice systems. In terms of regulating conduct, neo-Confucian states adhered to certain rituals such as ancestral worships and laws against suicide that differed in treatment from European states. Commonly, crimes committed by British citizens against Chinese citizens were leanly prosecuted. Whereas Chinese citizens committing an offense against a British citizen led to a trial in China where a British official was present to oversee the process. The procedure in which criminal trials were processed was part of a larger corpus of Western legal traditions, which were rooted in ideas of individual rights and civil liberties.

Asian and European courts faced challenges while processing extraterritorial jurisdiction. The difficulties arose due to China's legal system lacking structured formalities for legal procedures that were found in European courts. The mixed courts of Shanghai represented a plural legalism where the inchoate laws of the Qing court coexisted with the British legal system. As noted in the 1843 Supplementary Treaty of Bogue, the English version of the treaty outlined that

“‘British subjects’ (*Yingshang*) and ‘Chinese’ (*Huamin*) should be resolved through negotiation between the ‘British Consul’ (*guanshiguan*) and the ‘Chinese Authorities’ (*Huaguan*), who should strive to resolve the matter ‘amicably’” (Cassel 2004).

The language for the provision in English was clear whereas the Chinese text was ambiguous (Cassel 2004). Due to the incompatible arrangement, legal procedures resembled the British system more. The outcomes, which favored British citizens in

China, resulted from Great Britain's ability to maneuver through an unknown system using legal language that Europeans knew.¹⁵

Even decades later, Great Powers faced similar challenges in other East Asian nations. An example from the 1882 Treaty of Amity and Commerce between the United States and Korea indicated that

“Whenever the King of Chosen [Korea] shall have so far modified and reformed the statutes and judicial procedure of his kingdom that... they conform to the laws and course of justice in the United States, the right of extraterritorial jurisdiction over United States citizens in Chosen shall be abandoned” (Chung 1919, 200)

accentuated the cultural crevices between two legal systems. Plainly, Western powers wanted Asian nations to mirror Euro-centric legal procedures but not so soon where the Europeans could not take advantage of their legal position in Asia.

A push for extraterritorial jurisdiction was for Westerners to protect their citizens against harsh sentences. Provisions for criminal law involved other issues such as vicarious liabilities, excessive cruelty, and unusual punishments. Vicarious liability is a form of retributive justice where if the crime was heinous the offender and his relatives could be financially and physically punished. The practice had been common in 17th century Great Britain (Baty 1916). Korea, Japan, and China kept vicarious liability in the criminal justice system up through the 19th century. Though the practice sounds antiquated, vicarious liability is not an arcane concept since corporations, treated as persons in legal fiction, remained responsible for the actions of their employees.

¹⁵ In China, extraterritoriality created more trouble with domestically when gangster kingpin Du Yuesheng eluded local Chinese authorities by claiming French nationality (Cassel 2012, 39).

6 out of 38 (16%) treaties between Great Powers signed with Asian nations were symmetric, where both sides were granted extraterritorial jurisdiction. In 7 out of 11 treaties that Great Powers signed with postcolonial Latin American states, the outcomes were symmetric. In treaties among European nations, 8 out of 14 (57%) treaties had reciprocal extraterritorial rights. Treaties signed among Asian nations appeared quite asymmetric with only 1 out of 5 cases being symmetric. The extraterritorial jurisdiction (ETJ) variable appears mostly after 1841 because the bulk of the data are observations after that point. 46 treaties before 1884 and 31 treaties after 1885 included provisions for ETJ. From 1841 to 1912, 74 out of 77 treaties with the ETJ variable were noted. During 1901 to 1912, 8 out of 14 cases demonstrated that individuals were to be tried according to local laws. 38 out of 77 (49%) of the ETJ observations are in treaties between European and Asian states. In 32 out of those 38 cases, treaties recognized extraterritorial jurisdiction, so that persons were tried for laws of their citizenry, for persons living abroad. Over time, the percentages declined for incidents where criminals were tried under the laws of which they were citizens. As a key legal instrument of imperial control, extraterritoriality was statistically significant for region and binned decades at the 99% significance level. The contingency coefficient for extraterritorial jurisdiction with decades was .42 and the coefficient for extraterritoriality by regions was .43. As a paragon of unequal treaties, extraterritoriality was contested across regions.

The Social Variables

Foreign Residence and Local Authorities

The ability to settle abroad and to receive protection from local governments was the issue that the foreign residence and local authorities variables discussed.

Table 10. For Foreign Residence and Local Authority

Region-based dyad	Foreign residence % Reciprocal (raw counts)	Local authority % Reciprocal (raw counts)
1) Great Powers and Asia	43 (20 out of 47)	46 (16 out of 35)
2) Intra Great Powers	67 (2 out of 3)	45 (5 out of 11)
3) Intra Asia	13 (1 out of 8)	0 (0 out of 2)
4) Great Powers and Post-colonial Latin American State	100 (4 out of 4)	27 (4 out of 15)
5) Intra Post-colonial Latin American State	100 (1 out of 1)	0 (0 out of 3)
6) Post-colonial Latin American and Asian States	86 (6 out of 7)	83 (5 out of 6)
Approximate significance (contingency coefficient)	.000 (.49)*	.000 (.46)*
TOTAL (N= 235)	70 out of 235	72 out of 235

In table 10, I make a distinction between 0 and N.A., non-applicable.
Non-applicable cases had neither symmetric nor asymmetric outcomes.

The provision on foreign residences specified whether a person or persons from one country could build and rent houses or warehouses in another country. The provision for local authorities promised that foreigners residing within the territories of another nation would receive protection against theft or attack. The results of the foreign residence and local authority variables are less reciprocal for treaties between Europeans and Asians, than among Europeans. Among Asians, the asymmetry was also pronounced.

As for the permissions for foreigners to reside in the other's country, the issue was more important in treaties between European and Asian states during 1881 to 1900. 34 treaties mentioned foreign residence before 1884 and 37 treaties mentioned it after 1885. 47 out of 71 (66%) treaties with the variable for foreign residences involved contracts between European and Asian nations. From 1881 to 1900, 24 out of 34 (71%) of the observations had reciprocal residential rights, where citizens from one side could

rent or build houses and warehouses in the others' country, for the contracting parties. The reciprocity divided quite evenly for residential rights. 36 out of 71 cases allowed only one side to send foreigners to reside in the other's country; 35 out of 71 cases allowed both sides to send residents.

Treaties between Europeans and Asians comprised 47 out of 71 cases. 27 out of 47 (57%) cases in treaties between Europeans and Asians give citizens from the Great Powers, the right to rent and build property in Asian countries. And 20 out of 47 observations presented how the rights are reciprocal. The foreign residence variable was significant at the 99% level with the contingency coefficient of .49 when cross-tabulated by region. The contingency coefficient for foreign residence by decades was .45. The cross-tabulation of foreign residence by decades also yielded statistically significant results in that the approximate significance was 0 because there is 99% confidence that the variance across decades is not by chance.

Local authorities in a given jurisdiction were asked to protect residents including foreigners from theft, attack or any other disturbances. From 1861 to 1912, the issue where local authorities had to maintain order increased. From 1861 to 1880, only 26% (5 out of 19) of the responses had a symmetric outcome where both sides would be protected by local authorities of whichever country they were residing in. 36 treaties were pre 1884 and 36 were signed after 1885. From 1881 to 1900, the symmetric responses increased to 17 out of 27 (63%) where both sides had their citizens subjected to the rules and protection for whichever country they were in. Moreover, much of the asymmetries that existed in treaties between Europeans and Asians stemmed from the frequency with which North American and European citizens lived in Asia from 1840 to

1880. It was rare for Asians to live abroad. Eventually, Asians were traveling either for low wage work in South America by the 1860s or for academic studies in Europe by the 1870s. For measures on local authorities, the association with region was significant at the 99% confidence level with the contingency coefficient of .46. The cross-tabulation with the local authorities with binned decades was also significant at the 99% confidence level. The contingency coefficient was .41.

Table 11. Historical Legacy and Previous Contracts

Region-based dyad	Historical legacy % mentioning past contact (raw counts)	Previous contracts % amending previous laws (raw counts)
1) Great Powers and Asia	16 (5 out of 31)	70 (28 out of 40)
2) Intra Great Powers	47 (8 out of 17)	49 (19 out of 39)
3) Intra Asia	20 (1 out of 5)	75 (3 out of 4)
4) Great Powers and Post-colonial Latin American State	40 (2 out of 5)	27 (3 out of 11)
5) Intra Post-colonial Latin American State	100 (4 out of 4)	0 (0 out of 5)
6) Post-colonial Latin American and Asian States	N.A.	100 (1 out of 1)
Approximate Significance (Contingency coefficient)	.021 (.30)	.000 (.35)*
TOTAL (N= 235)	62 out of 235	100 out of 235

Historical Legacies and Previous Contracts

The historical legacies and previous contracts provisions measured how previous contact between two countries affected treaty outcomes commercially and diplomatically. With diplomatic exchanges, the previous contracts and historical legacies mostly affected the relations between European and Asian states and for among Asian states. As for historical legacies, 50% (31 out of 62) of the total reflected how treaties between European and Asian states mentioned past relations. 62 out of 235 treaties had a marker for historical legacies. Of those Asian and European comments on past relations, 5 out of 31 treaties attempted to resolve past disagreements.

Sixty-two treaties in the dataset included a value for the historical legacy variable. In 20 out of 62 treaties flagged for the historical legacy variable, no history between the two nations prior to meeting for the treaty on-hand existed. The historical legacy variable cross-tabulated with the binned decades yielded a contingency coefficient of .47 at the 99% level. Historical legacy as being neutral, positive or negative was mentioned in 42 out of 62 cases. Of those 42 cases, 19 treaties also discussed the most favored nation (MFN) clause and the majority of the promoted reciprocal MFN statuses. 16 out of 19 MFN clauses nested within treaties that referenced historical legacy were for reciprocal statuses. 55% (34 out of 62) of the treaties that mentioned prior cultural exchanges were treaties signed after 1885. 28 treaties before or in 1884 mentioned historical legacy. Similarly, the mention of previous contracts and prior legal agreements became more prevalent in treaties signed later in the 19th century.

One hundred treaties mentioned previous contracts. The treaties could either either uphold previous treaties as valid (46%) or amend the previous treaties (54%). Of the 100 treaties that mentioned previous contracts, 28 out of 40 (70%) treaties updated or amended prior agreements between European and Asian states. For the treaties between European and Latin American states, only 5 out of 30 treaties in the sample mentioned the historical legacy although the newly independent Latin American states were once under European colonialism. With previous contracts, the association with the regions was significant at the 99% level with a contingency coefficient of .35. By binned decades, the contingency coefficient was .40 with a 99% level of confidence. Several treaties omitted the formality of acknowledging the validity of previous contracts.

Seventy-four out of 100 treaties that mentioned previous contracts were signed after 1885. And 32 out of 74 (43%) of them wished to uphold the contracts. 42 treaties signed after 1885 recommended amendments or updates to previous arrangements. In cases where the previous contracts were not amended, the rights for foreigners to reside in the others' country was also stated as symmetric in 6 out of 10 cases. Of the treaties where previous contracts were valid, only 10 treaties in that grouping also mentioned foreign residential rights. Additionally, 12 out of 15 treaties, where previous contracts were amended, the residential stipulations were symmetric. Also if previous contracts were kept valid, in 8 out of 10 of those cases both parties were offered most favored nation status. In cases where the previous contract was amended or updated in 10 out of 14 cases the MFN status had symmetric outcomes. So for previous contracts, changed or unchanged bore little impact on symmetries for economic variables. However, the continued lines of communication proved to be a powerful indicator for mutually beneficial future outlooks.

Conclusion

Recalling the 2 main hypotheses that motivated my analysis, I find support for the first hypothesis. The differences in outcomes according to region-based dyads appeared most significant if one or more of the high contracting parties were from Asia. Post-colonial Latin American states and Great Powers strove towards greater symmetries in economic, diplomatic, and criminal matters. Great Powers with Asian nations or intra Asian nations bore asymmetric outcomes for items such as the most favored nation clauses, extraterritorial jurisdiction, and the rights of foreign residence.

Many instances in the chapter supported hypothesis 2 because symmetry for nearly all variables increased over time. By the 20th century asymmetries in the most

favored nation clauses and foreign residences were nearly nonexistent. The year following the Berlin West Africa Conference, 1885, did not yield more reciprocity legally. Few cases involving the most favored nation clause, consular representation, disaster relief, foreign residences, and protection of properties, asymmetries declined after 1885 but economic inequality persisted. For the other key provisions such as clandestine trade and local authorities, there was no great difference in activities pre- or post-1885. Provisions for historical legacy and previous contracts suggested how having had a past persuaded symmetric outcomes on key terms in subsequent contracts.

The treaty system expanded near the end of the 19th century and grew increasingly complex. Over time, each treaty dealt with topics more specifically. The scope of the treaty became narrower. The newer treaty types included documents that dealt with specific items such as the arbitration, extradition, delimitation, consular, and pilotage among others. Commercial treaties as a broad category became more specialized and dealt with specific topics such as arbitration, arbitration, and pilotage.

All the while, the text of the treaties appeared more formulaic. The standardization in legal contracts pervaded globally. In extradition and arbitration treaties, the format and content of the treaties were similar and often identical to one another. The 1893 Treaty of Friendship, Navigation and Commerce between Germany and Korea was nearly a facsimile of the 1883 Treaty of Friendship between Austria-Hungary and Korea. Sentiments were echoed in multiple friendship treaties as well. These patterns formed the structures of international law.

In the 19th century, nations new to the Western legal system engaged with the rules. In sum, contracting parties for the treaties represented unique national goals yet

European nations approached Asian and Latin American states with like economic and cultural goals. The European states partly wanted economic resources acting in reaction to the world's political economy (Strang 1990) but also desired to civilize different cultures namely towards Christianity (Kane and Park 2009). The treaties in the dataset reflected how different regions started out asymmetrically for key economic, political, and social provisions but the relations grew towards symmetric outcomes by the 1900s.

In comparing the Great Powers' treaties with Asian nations to western nations' treaties with post-colonial Latin American states, literature on the domestic policies of the Latin American states shed light on post-colonial Latin American states' endeavors to establish good relations with European nations because elites of South American considered themselves to be a part of Europe. Cultural significance of race in Latin America appeared in different form from the racial identities that developed in Asia. In the 19th century, post-colonial Latin American states presented a "whiter" and more European nation-state. The state census intentionally discounted the existence of native tribes, avoided including categories for mixed race individuals, and lumped mixed race individuals with some European descent into the "White" category (Loveman 2009). Loveman's studies on census reports demonstrated how governments dogmatically attempted to portray their states to be homogeneous. Latin American states used treaties and other governmental acts to depoliticize racial tensions that existed within national borders. Although South American nations were subjected to European colonial rule for centuries, South American states established friendly diplomatic relations with European states. The effort resulted in post-colonial Latin American states garnering more symmetric treaties than Asian nations.

Asian nations, prior to the 20th century, hoped to combat the Great Powers and to preserve traditional hierarchies established within Asia instead of gaining Western allies. The Asian states unsuccessfully tried to maintain their isolationism first. After signing “unequal” treaties, the Japanese government, in particular, with the Iwakura missions of 1871 hoped to renegotiate the terms. The mission did not succeed diplomatically, but the diplomats examined Western establishments and the Japanese found models to study and scrutinize. As a result, the reaction to the “unequal” treaties created a new form of imperial power in the late 19th century, which germinated from Asia. The process and ideologies, which led to Japan’s exercise of imperialism in the 20th century, are explored later in the dissertation.

Appendix to Chapter 2

Postcolonial Latin American Treaties

Colonial campaigns in the 15th century followed loose guidelines on how polities may be conquered. Generally, areas without recognizable forms of governance were poachable polities for colonial regimes. Without a form of governance, territories were not recognized as sovereign nations. Westlake, a 19th century legal scholar, systematized how territories may be recognized as independent polities. As Westlake had noted, at least 5 ways for territories to gain sovereign recognition – 1) occupation which was either discovery or more often annexation in modern times, 2) accretion which means water boundaries, 3) cession formally finalized by treaties, 4) conquest which were cessions without treaties, and 5) prescription which were property held by someone for a long time (1894, 146-160). His efforts to provide some protections for longstanding residents of securely bordered areas were unwelcome since capricious standards denigrated certain polities from gaining sovereign recognition.

During the 15th century, the legality of territorial conquest was unwarranted. The effrontery of European aristocrats presented non-European polities as conquerable. Those decisions to colonize affected modern state development. James Mahoney's (2010) account of contemporary state development in 15 Latin American nation-states that were once under Spanish rule highlighted how pre-colonial settings affected colonial arrangements and the future outcomes for various nation-states. He argues that political and economic arrangements established two centuries earlier have impact on levels of social and economic development today. Mahoney used path-dependent models to credit pre-colonial conditions affecting postcolonial development.¹⁶ Three parts comprise a path-dependent argument. The first element is the initial conditions that represent historical junctures. The second part are the "increasing returns" that maintain a path (Mahoney 2003, 53). At the third stage, the events reach equilibrium and the conditions are locked in place. Economic growth in the colonial peripheries such as Argentina, Uruguay, and Costa Rica developed rapidly even though they were poor as colonies. The three centuries of colonial activity in Latin America affected the times of independence and border issues (Mahoney 2003).

Mahoney tested the how Spain's transition from the Hapsburg to the Bourbon monarchy changed the emphases in colonial campaigns. Mahoney discussed mercantilist era (1492-1700) under the Hapsburgs and the liberal colonial era (1700-1808) under the Bourbons. Liberalism here is based on Mill and other European scholars' call for the progressive principles of self-development (Mill 1859).

¹⁶ Mahoney employed a mixed-methods approach and assessed fuzzy set theory to discuss qualitative historical analyses and quantitative economic figures (Mahoney 2003).

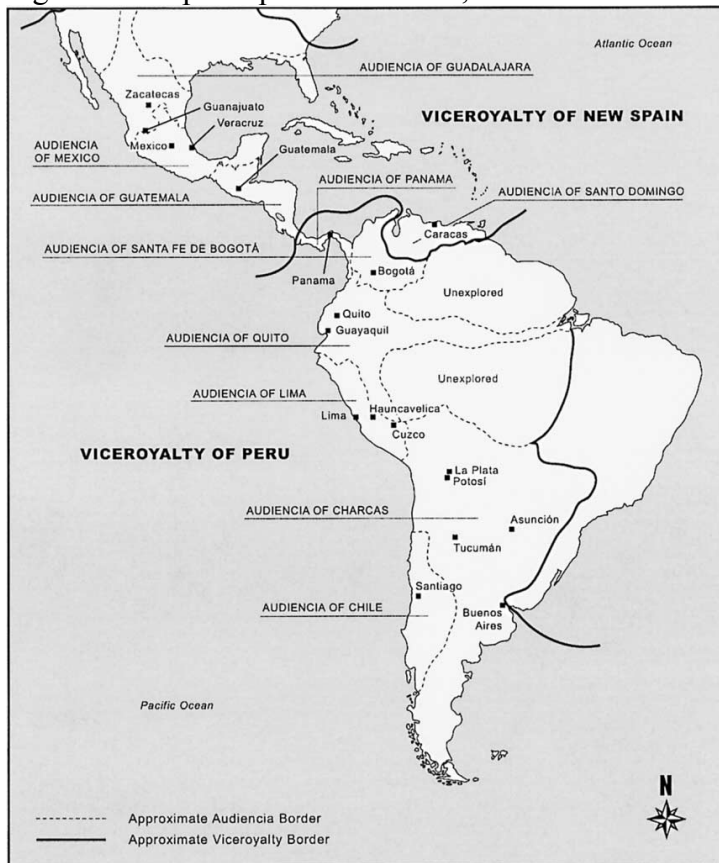
Table 12. Model of Differentiated Colonial Phases in Spanish Latin America

	Mercantilist (1492-1700)	Liberalist (1700-1808)
Accumulation Orientation	Promotion of economic self-sufficiency; short run consumption	Promotion of international comparative advantage; long run investment
State Regulation	More restrictions on trade, ownership, and economic participation	Fewer restrictions on trade, ownership, and economic participation
Stratification System	Status-group hierarchy; patrimonial, state-economic elites	Market-based class stratification; capitalist class

Source: Mahoney (2010, 21)

In the mid 17th century, Latin America was divided into viceroyalties (See Figure 6). By the end of the 18th century, the Spanish crown allowed free trade in most of the colonies. Colonial imports to colonies increased ten-fold from 1782 to 1796 (Mahoney 2003, 72). How the colonial government distributed resources varied across Latin America over time. Settling highly organized indigenous populations such as the Aztecs, Incas, and Aymaras during the mercantilist phase yielded to establishing a highly stratified colonial society based on economic extraction including forms of *encomienda* and *mita*. The rigidity of the mercantilist colonial regimes hindered long-term economic growth when nations were postcolonial.

Figure 6 - Map of Spanish America, circa 1650



Sources: Burkholder and Johnson (1998, 82); Lombardi, Lombardi, and Stoner (1983, 28–29), and Sanchez-Albornoz (1974, 81) from (Mahoney 2003, 65)

During the liberal colonial phase, the Bourbon aristocracy focused on colonizing sparsely populated areas that did not have highly developed political organizations. In regions with liberal colonial regimes, the indigenous population abided by less strict hierarchies. Further, Mahoney discussed how best-positioned territories such as Argentina, Uruguay, and Venezuela became the colonial centers of the liberal colonial regimes while the mercantilist centers were Bolivia, Ecuador, and Guatemala which were not advantageous locales (Moran 2011). Instead of limiting the scope to activities since World War II, examining how the last 200 years affected a nation certainly present scholars with more data and more insights into macro-level political decisions.

Colonialism intensified hierarchies in Latin America. The issue of citizenship developed concurrently with the issue of state sovereignty. Younger (2012) captured the problems with Citizenship in the Río de la Plata Borderlands from 1845–1864. Because Latin America maintained slavery for centuries even after colonial independence, the right to citizenship in Uruguay staved individuals from slavery. Brazil did not abolish slavery until 1888. The Extradition Treaty of 1851 between Uruguay and Brazil required slaves to return to Brazil. During the mid to late 19th century, new governments disputed the borders within Latin America. Treaties and other forms of legal interventions appeased micro-level conflicts between individuals that also attributed to macro-level and national decisions. Property disputes usually required joint commissions to affirm decisions. National sovereignty is a requirement for citizenship (Soysal 1994); and nation-states maintain the rights of citizenship.

During the 19th century, the right to national sovereignty became challenged due to new legal standards. Legal categories such as protectorates granted Europeans control over non-European territories with a singular document (Anghie 2001). The European diplomatic primacy of the balance of power theory, which Metternich proposed at the Congress of Vienna in 1815 after the Napoleonic Wars, shaped the debates during the West Africa Committee in 1865 and at Berlin in 1884. As mentioned in Chapter 2, the Berlin West Africa Conference of 1884 to 1885 highlighted the colonial scramble of the 19th century although competition alone did elicit political expansions. Kasson at the Berlin Conference urged the diplomats to ensure voluntary consent for the conquered tribes of Africa, but linguistic barriers and conceptions of European superiority prevented steps towards attaining consent from the colonized. By exercising the legal concept of

terra nullius, the European officials nullified Latin American and African nations' internal organizations.

African Treaties in the 19th Century

Legal positivists such as Westlake dismissed some African tribes' ability to manage their own polities. The partition of Africa occurred with auspicious "treaties" that African natives signed with explorer Henry Morton Stanley (1841-1904) (Anghie 2004, Hochschild 1998). Stanley acted on behalf of King Leopold II of Belgium through an association called the International Association of Congo. In addition to Belgium, Great Britain and France established extensive colonial campaigns in Africa.

Christiana Agawu's dissertation (1995) distilled the intercultural (between African and European states) and intracultural (among European states) political contention over Africa from the 17th to 19th century. Her main thesis emphasized the economic rationale for colonialism. Cultural attributes also entered the multi-national planes of Africa. Cross-cultural fluidity occurred more before rather than Africa formal treaties. Before the annexation of African colonies, Europeans had contact with the Africans and Africans were allowed religious freedom (Agawu 1995, 103). The social restrictions followed formal legal annexations.

Agawu (1995) examined the colonial activities from the 17th to 19th centuries, but the bulk of the activities occurred during the 19th century. Agawu remarked that treaties involving African nations existed prior to the 17th century however most treaties were signed from 1866 to 1870 (Agawu 1995, 72). From 1778 to 1894, 95% of the African continent was under European imperial rule (Agawu 1995, 45). Africa, similar to Latin America could not build political and social infrastructures without European institutions, which downgraded the status of native populations. In Asia, only a few formal colonies

that mainly the Japanese colonized existed in the early 20th century. In both cases, the steps used to occupy the territory referenced legal treaties that operated under the surveillance of other nations in the European community.

As Fieldhouse noted, the major acquisitions in Africa after the 1840's occurred following 3 main events - 1) a rivalry between France and Great Britain over the Middle East, 2) the budget restrictions to maintain colonies (Agawu 1995, 196), and 3) the signing of the Anglo-French Treaty of 1889, 1890, and 1891 (Agawu 1995, 199). Agawu noted that the British imperial policy was not to provide support for explorers. But eventually, the British to maintain natural resources in Africa, the British governed more closely. In 1899, the British annexed Transvaal, modern day South Africa, which in 1897 produced 24% of the world's gold supply. The French were "sub-imperial" where annexed territories had colonial governors where governors had some autonomy in their actions. Comparative colonial strategies among European nations produced like results of unrest in postcolonial contexts.

The treaties highlighted the African nations' unequal relations to European states. Though the Europeans benefited from natural resources and labor in Africa, the inequality furthered to where African nations paid their colonizers. In 24 out of 208 treaties, Africans paid an annual tax to their colonizers (Agawu 1995, 64). Long before the opening of the Suez Canal in 1869, directly ruled colonies in Africa were outposts for cheap labor and raw materials such as peanuts, palm oil, and timber. After 1869, passage through Africa facilitated trade to India and other parts of Asia. Accessible trading opportunities elicited European nations to jostle for control in the region.

The treaties in Africa centrally discussed economic issues. Other topics involving political, military, and religious or humanitarian complexities between African and the European colonizers also appeared in treaties. Humanitarian issues, which were of some concern during the Berlin West Africa conferences, were mentioned in treaties between Africans and Europeans. Even so, Christian evangelism had nominal effect in Africa since 3.7% of the treaties mentioned religion and humanitarian issues themselves appeared in 3.1% of 524 treaties. In terms of religion and language, European colonizers left indelible marks in Africa. Economically, the stages of economic development in Africa suffered from poor transfer of European institutions. Unequal bilateral trade agreements and foreign investiture agreements continue to extract resources out of Africa to industrialized and developing nations in other regions.

CHAPTER 3

CHINA'S TURMOILS WITH UNEQUAL TREATIES

Leo Tolstoy's famous opening to *Anna Karenina* stated, "All happy families are alike; each unhappy family is unhappy in its own way," (Tolstoy [1878] 1917). Through the Oblonsky family, Tolstoy depicted the turmoil within Russia's social and political systems. Likewise, the metaphor for a family had been woven into international relations between Asia and Europe. The Europeans organized around the concept of the "family of nations" during the 19th century. The analogy of a family involved the state affairs of Asian nation states. The family was central to China's Confucian order and that materialized in China's tributary state relations. China considered itself "elder brother" watching over Korea, the "younger brother."

The tributary order of China during the Ming dynasty (1368–1644) had 6 tribute groups. The first category comprised 18 countries known as the southeast barbarians, which included Korea, Japan, the Liuqiu or Ryukus, Annam, Cambodia, Siam, Champa, Java. The second category of southeast barbarians comprised 44 countries, which included Sulu, Malacca, Sri Lanka. The third category of northern barbarians had 8 countries led by the kings of Datan. The fourth category was the northeast barbarians of Nuezhi. The fifth category was the first half of the Western barbarians, which had 58 "west of Lanzhou in the northwest" and 38 other Western nations (Hamashita 2008, 15). The sixth category was the second half of the Western barbarians, which included 14 groups from Turgan (Hamashita 2008, 15). China's tributary system regarded non-Chinese lands as barbaric polities. The term for barbarian, *yi*, became synonymous with

foreigners. The interchangeability of the terms offended the British. The Europeans and Americans that entered China and Japan in the 19th century paternalistically instructed the Asians to accept new practices in business, law, science, and governance.

Within Europe, the “Family of Nations” was a practical solution to 17th century restructuring for the balance of power. The royal families of Europe were often bickering family members that resolved personal and political issues through diplomatic conferences. The hereditary royal lineages that ruled France, Spain, Great Britain, Denmark, Sweden and Lombardy plus the five elective monarchies of the Holy Roman Empire, the Vatican, Poland, Hungary, and Bohemia and the four republics of Venice, the Republic of Italy, Switzerland, and Belgium had blood ties with leaders of other European nations (Wilson 1912). The “family of nations” came to be known as the “standard of civilization” that the Asian states attempted to meet in the 19th century.

In this chapter, I discuss the foreign relations of pre-modern Asia with a particular focus on China. Then I examine the major treaties that China signed. The Treaty of Nerchinsk (1689) with Russia, Treaty of Nanking (1842) with Great Britain, Treaty of Tianjin (1858) with Great Britain, Treaty of Shimonoseki (1895) with Japan highlight several key junctures in Chinese political regimes. The dissent against foreigners also led to uprisings such as the Taiping Rebellion (1850-1864) and Boxer Rebellion (1900). The international system of 19th Asia operated under different sets of norms than intra-European relations had (Krasner 2001). The differences were pronounced in China.

Revisiting European Concepts of Statehood

China and Japan’s treaty relations with Western nations demonstrated how opening ports for commerce, establishing diplomatic posts, and approving the most favored nation clause were contentious processes. The unfamiliarity with Western legal

forms disadvantaged Asian statesmen. The Qing officials of the early 19th century initially considered the most favored nation to be beneficial in maintaining the balance of power and prevent a country from over-dominating (Auslin 2000, 23).

The Asian state-system in the 19th century differed from the European model of a state system. Asia transformed from the Sino-centric tributary state system to reposition Japan as an imperial power in the early 20th century. In the suzerain state system, China was the political, commercial, and cultural center in Asia. China's view of the world was one strictly divided among the "civilized" (*hua*) and "uncivilized" (*yi*) countries (Hamashita 2008, 91). The Sino-centric world order allowed Korea, Japan, and Vietnam to have their own spheres of influences within the neighboring regions in Asia (Hamashita 2008, 88). Here I argue that China's path affected Japan and how these decisions in turn shaped Japan's policies towards Korea.

In Europe, Westphalian sovereignty idealized sovereign equality where each nation had equal weight in accordance to the "law of nations" in diplomatic affairs. At least legally, each side's views were evaluated as valid and respectable in treaty negotiations. The definition of Westphalian sovereignty as used in international relations focused on territoriality and the absence of external interference on domestic affairs. Treaties were formally legitimate means to influence another nation's legal system. During the 19th century, poor relations with Western nations led to China's downturn. In comparison, Japan used Western contacts to improve educational and industrial infrastructures. European and American merchants challenged China and Japan's domestic sovereignties to restructure existing economic models in Asia. Treaties led to

China's demise and Japan's rise as a major world power. The processes were multifaceted based on each nation's readiness to accept the terms of the treaties.

Treaties affected micro and macro-level international governance. The changes influenced individuals at the interactional level too. Especially in developing the language for law, inter-personal skills crucially affected legislation. Language mediated conversations between scholars and translators. Because language shaped the concepts that individuals could reference, developments in terminologies bridged some cultural rifts that existed between Asian and European thinkers. Translations of legal treatises further transmitted the concepts of international law (Gong 1984, Liu 1999). Hypothetically, translations tried to make words equivalent in meaning but translations could never be perfect replications. The conditions during which these translations were made in Asia reified some power differentials that were present in economics, military capacity, and science.¹⁷ Historicity also changed meaning in texts. Because texts from the period still remain, the conflation of legal philosophy and practice challenge historical legacies.

With the treaties, Europeans hoped to secure trade, protect civil liberties, and gain access to certain port cities in Asia. A particularly contentious issue included extraterritorial jurisdiction. The Europeans extended extraterritoriality to protect their citizens from local authorities. In practice, consular jurisdiction often cloaked illegal activities such as smuggling, murders, and rapes (Cassel 2012, Peters 2007). China endured years of unequal extraterritorial jurisdiction until 1943. Even a decade or so

¹⁷ Furthermore, feminist scholars debate how the masculine pronouns of certain languages continue to provide relationships of "unequal exchange" (Liu 1999, 37).

after the commission in the 1920's to overturn the unequal treaties, foreigners in China enjoyed privileges and operated under different sets of rules.

China before the 19th century

A common misconception about Asia before the 19th century is that China, Japan, and Korea were completely closed off from Western contact. The Ryukyu maritime trading networks connected China, Japan, and Korea starting in the 15th century (Hamashita 2008, 60). By the 17th century, Portuguese missionaries and Dutch merchants settled in China and Japan, respectively. Trade and commercial negotiations among Asian nations thrived at this time (Toby 1984, Hamashita 2002, Larsen 2008). Though formal treaty relations were infrequent up through the 19th century, European and Asian traders had contact with one another.

The Jesuits, who entered China in the 16th century, disturbed China's unifying ideology of Confucianism. Confucianism emphasized order and stability that was achieved due to one's respect for others based on five major human relationships. The five bonds (pinyin: *wǔlún*, 五倫) privileged obedience and respect. The bonds dictated actions for the ruler to his minister, father to son, husband to wife, and elder brother to younger brother, and friend to friend. The concepts guided domestic life as well as international affairs. Familial terms represented international relations. The emperor of China viewed the Korean nation as "Little Brother" (Gries 2005).

Europeans' diplomatic contacts with China established intellectual and commercial exchanges. China's earliest contact with a European state dated back to the 14th century. During the latter part of the Ming dynasty (1368–1644), the first Portuguese ship arrived in 1514, and by 1517, Portugal sent to China its first ambassador, Tomé Pires

(Roberts 2006, 131). The settlement of Jesuits in 1582 provided the Chinese with access to European science, philosophy, and theology. During the period of Manchu rule, the Jesuits curried the favor of the Chinese when missionaries treated the emperor Kangxi of malaria (Roberts 2006, 146). European contact changed scientific and other intellectual endeavors in Asia.

The differing notions of sovereignty blazed the path towards misunderstandings at the interpersonal to international levels. Though diplomatic relations with Europeans existed for centuries, Asian states limited commerce and education to isolated regions. Interactions with Westerners were quite limited. The first diplomatic mission from a European state to China was from 1618-1619 when Russian ambassador Ivashko Petlin and Ondrushka Munoff visited Peking. However, the Russian diplomats were unwelcome in China because they did not prepare tributary gifts for the emperor. Exchange of gifts, *ketou*,¹⁸ and numerous other gestures were part of the diplomatic repertoire in Asia. Adopting these practices became a challenge for future European diplomats.

In 1653, when Russian ambassador Fedor Isakovich Baykov brought gifts but refused to *ketou* to the emperor, the Russians' attempt to establish a fur trade with the Chinese was thwarted. European diplomats also differed from the Chinese in their conceptualization of sovereignty and statehood. Sovereignty that established after the Peace at Westphalia in 1648 affected the development of international law. The variance between Asian and European view of international relations was based on concepts of tributary versus domestic sovereignty state systems. In the suzerain state structure,

¹⁸ *Ketou* (sometimes appearing in texts as *kowtow*) was a customary bow that involved kneeling on the floor and touching the forehead down to the ground.

tributary states revolved around China, and to the Chinese all other nations including European empires were subordinate states.¹⁹ The Europeans, who in turn, perceived themselves to be superior over the Chinese, wanted the Chinese to accept sovereign equality as a legal doctrine.

Treaties of Nerchinsk (1689) and Kiakhta (1727)

Bilateral treaties between European and Asian states existed as early as the 17th century. The point less emphasized in historical accounts of the treaty referred to the four parties – Russians, Mongols, Manchus, and Jesuits – that agreed to settle the ambiguous border issues in the treaty (Perdue 2005, 163). Diplomats transcribed the text of the treaty into Russian, Chinese, Manchu, Mongol, and Latin.²⁰ At this time, neither Russians nor the Qing expected state relations to occur among equals. Therefore, the concept of Westphalian sovereignty did not determine the negotiations. The Treaty of Nipchu (or Nerchinsk) in 1689 between China and Russia established the two nations' borders on the river Gorbitza (MC 1917, art. 1).

Similarly, territory located left of the Argon River was under Chinese controls (art. 2). By quelling past disputes between the Chinese and Russians along the border, the two nations desired an amicable relationship (art. 6). Article 6 mentioned the right of the “Sovereigns of both Powers” (MC 1917, 7) but “Sovereigns” in this treaty implied the will of the rulers rather than the citizenry and empires.²¹ The Treaty of Nerchinsk, unlike

¹⁹ In the 18th century, Qing China territorially doubled in size. China did not industrialize during the time of Europe's Industrial Revolution. According to Kenneth Pomeranz, Europe had the advantage of coal and silver reserves, which precipitated Europe's industrial development (Roberts 2006, 154). Though domestic trends in China changed to diversify popular culture and to include women's voices into social discourse (Ko 1994), China's contact with Western culture and economies disrupted China's society.

²⁰ The version analyzed here was the original approved copy in French.

²¹ Additional treaties between Russia and China were signed in 1727, 1768, and 1792, which did not address Westphalian sovereignty.

many treaties of the 19th century, received mutually beneficial results from the treaty between Asian and European nations.

A few decades later, the Treaty of Kiakhta (1727) between China and Russia implied equal standing between the two nations (Hamashita 2008). The Treaty of Kiakhta between Russia and China in 1727 established a form of equality between the two kingdoms. China accepted other Asian nations as tributary states. Russia was considered more equal in stature and exchanged letters reciprocally (art. 6). With opened trade with Russia came an influx of silver from South America via Spain and the rest of Europe. China made efforts to accept new currency. The Russians brought both silver and gold coinage into China in the late 18th century (Hamashita 2008, 43). The shortage of silver coinage in the 19th century pushed the Chinese and British to practice bartering (Hamashita 2008, 143), which had been practiced for centuries.

The Canton system in China privileged an exclusive group of cohong merchants to trade with Westerners. The Treaty of Kiakhta (1727) and the later treaties that China signed with Western nations directly addressed the issue of the Canton system and cohong merchants. The Russians benefited from trade following Kiakhta (Lukin 2006). Through 1850, the Kiakhta trade accounted for 15 to 20% of the total customs revenue for the Russian Empire (Lukin 2006, 19). The topics covered in the 1689 and 1727 treaties shaped Russia's rivalry with Great Britain to maintain power in Northeast Asia. The emperor formally recognized the Canton system with a decree in 1759 (Tignor et al. 2008). By the 1720's, the cohong merchants formed a monopolistic guild in Canton (present-day Guangzhou). The merchants charged European merchants with nonnegotiable fees. The Canton system left trade with Westerners exclusively in the

hands of cohong merchants who controlled prices and trading conditions without regulatory interference.

In 1760, Canton was the only open port available to foreign nationals.²² The British made attempts to strengthen trade relations with the Chinese but proved to be difficult. In 1792, Lord Macartney of Great Britain sent an embassy to China to secure the tea trade. The British show of hospitality, which included gifts for the emperor, was insufficient for the Qianlong Emperor who expected the British gentlemen to perform a *ketou*. Such hospitality errors embarrassed British diplomats. In 1793, the Qianlong Emperor rejected King George III's envoys. The Chinese emperor's conception of himself as a supreme central figure went unchallenged for centuries until the Europeans approached him for offers of trade. The emperor reprimanded the British king for being "ignorant of [China's] dynastic regulations" (Shurmann and Milton 1967, 112). The Chinese emperor displeased with "barbarian merchants" for failing to "Tremblingly obey" Chinese laws and customs rejected the proposal from the British (Shurmann and Milton 1967, 113). Nonetheless, the British did not leave China after the harsh admonitions and managed to establish some trade relations.

The diplomatic foul or hospitality error tarnished China's future exchanges with Great Britain. When the emperor in 1816 denied Lord Amherst's embassy request to expand trade with China, opium smuggling heightened. China's stance against Western intrusion partly kept Asia unified under a strictly hierarchical unit that China had envisioned. The Chinese avoided what they considered to be the adulterating influences of merchant based economies and Christian thinking that would disrupt the five major

²² Pan-Asianism of the 18th century was primarily anti-Western. The Chinese emphasized their imperial centrality to keep out Europeans further.

social relations of Confucianism. Even so, China like many European economies that shifted from agriculture to industry centuries earlier and moved into a trade-based economy with some resistance.

In 1834, the East India Company's monopoly on trade within China ended. Several skirmishes in Guangzhou between British sailors and Chinese authorities incited the First Opium War. The British, on September 21, 1839, wanted China to compensate them for the loss of opium due to the detention of sailors. The British naval forces easily defeated the Chinese. After the First Opium War (1839-1842), the Treaty of Nanjing (1842) between the two empires fiscally destroyed the Qing Dynasty. Furthermore, the Chinese government's trust in the international system as a fair institution, worthy of adoption, seemed less desirable after the treaty.

China's trade relations signified the importance of commerce for diplomatic affairs. By the 1840's, China traded triangularly with Great Britain and India. In the 1850's, Karl Marx debated the origins of the Opium War in the New York Daily Tribune and stated that the Opium trade caused the war. Other scholars, Fieldhouse and Trocki, supported Marx in his identification of commerce as a central impetus for war.²³ Although Fieldhouse believed that colonies were taken as a last resort to save the peripheries from self-destruction (Howe 1998), imperialism served economic interests. Fairbank disagreed with Marx. Fairbank presumed through Western normative lenses that the Chinese becoming civilized and stated that the Opium War was due to clashes between Chinese and Western cultures.

²³ As Karl Marx stated in the New York Daily Tribune article, "Trade or Opium," on September 20, 1858, the cause of the Opium War to further British commercial gains in China (<http://www.marxists.org/archive/marx/works/1858/09/20.htm>).

As for the effects of the war, impact was economic and cultural. From 1842 to 1949, China signed over 1000 treaties and agreements with 18 different nations (Peters 2007). Of them 13 treaty partners were European²⁴ - United Kingdom, France, Sweden-Norway, Prussia, Portugal, Denmark, the Netherlands, Spain, Belgium, Italy, Austria-Hungary, Russia, and Switzerland. Additionally, Japan, Peru, Brazil, Mexico, and the United States concluded treaties in China. 64 treaties in the dataset involved China. 53 of 64 treaties were signed with Western nations, 9 involved another Asian state, and 2 were with South American states.

Table 13. Distribution of Chinese Treaties by binned decades

Binned Decades	Count
4) 1841 to 1860	13
5) 1861 to 1880	13
6) 1881 to 1900	23
7) 1901 to 1912	15

Table 14. Distribution of Chinese Treaties by Type

Types of Treaties	Count
1) Peace	7
2) Commerce and navigation	11
3) Friendship	24
5) Arbitration	2
6) Delimitation and protectorate	2
7) Consular conventions and other	18

Scholars of China reflected upon the period between 1842-1943 as the “treaty century” (Fairbank 1992), which was also known as *guochi*, the time of national humiliation (D. Wang 2005, 1). Fairbank’s interpretation of the treaties represented an older historiography of the clash between the Eastern versus the Western cultural norms. The fractured perspective of world cultures returned with Samuel Huntington’s “Clash of

²⁴ Peters (2007) did not include Russia as a European nation. I took the liberty of grouping Russia as such.

Civilizations” thesis, but the position agreed with Marxian analysis of viewing imperialism as a fulfillment of British economic goals.

In terms of economic development, how the Europeans succeeded is debatable. According to Pomeranz (2000), the Chinese farmers produced less nitrous soils than European farmers and the Chinese farmer consumed more calories per day than European farmers before the 19th century. The growth of Europe in the 19th century was surprising due to China and Japan’s high standards of living and life expectancies which were better than European standards of that time. The Chinese empire was capable of mobilizing a workforce comparable to the Industrial Revolution in Europe. Up through the 19th century, China’s wealth was like those of Europeans in terms of key industrial and technological advances. The Asian merchants did not expand their markets in comparison to their Western counterparts during the late 19th and early 20th centuries because Asian merchants did not use techniques such as arbitrage or speculation (Pomeranz 2000). In an antiquated line of argument the rationale for not developing industrially was due to constructions interfering with the *fengshui*, the harmony between man and nature (Fairbank 1992).

Europe’s innovations in scientific knowledge propelled technological developments in navigation and industry. Goldstone (2012) noted how ideological rifts yielded European success and Asian stagnation. Europeans advanced due to a stark break from its intellectual past whereas China seemed reluctant to break from the past (Goldstone 2012). Confucianism’s disapproval of commerce prevented China from developing mines, railroads, and telegraph lines. The Chinese attempted to integrate European enlightenment with Confucianism (Fairbank 1992). Teaching both schools of

thought without contradictions was abandoned in 1881 (Fairbank 1992, 219). Europeans' primary goals in economic gains changed drastically differed from Asians' lowly regard towards the merchant class.

How law functioned as a discipline differed in East Asia and Europe. A standard Western historiography on China deemphasized traditional Chinese laws as a mere model that could not be followed strictly as a code of behaviors. Recent scholarship questions the misleading assessment of China's lawlessness (Nakamura 2004, Bourgon 2007 and 2008). A differentiation existed between conceptualizing law as an idea and law as a model. Law was practiced differently according to national standards and for the Chinese, the power of written law, which was paramount in the European context, remained less significant for them. Translating European laws into Chinese imbued new cultural registers. Further, the Japanese language developed words to accommodate concepts for "independence" (*zìzhǔ*, 自主) and "sovereignty" (*dúlì*, 獨立). Chinese foreign minister Li Hongzhang considered signing treaties to be merely a symbolic act that had little material consequences (Larsen 2008). However, after several treaties, costly restructuring ensued.

The discourse between the Chinese diplomat, Li Hongzhang and the Japanese diplomat, Mori Arinori resolved,

"Treaties would do for ordinary commercial relations. But great national decisions were made according to comparative national strength, not according to treaties" (Larsen 2008, 283).

Mori spoke in realist terms and justified his disregard for treaties because of power differentials. Li replied, "This is heresy. To rely upon strength and violate treaties was

not tolerated by international law” (ibid). Mori replied, “International law is also useless” (ibid). Such an account illuminated early interpretations of international law in Asia.

Treaties as representative features of international relations demonstrated how external forces affected domestic politics. Information on treaties written earlier between European and Asian nations illustrated how Europeans operated on the primacy of written law and the Asians, the Chinese in particular, differently conceived law more as an ideal type. Since treaties largely dealt with economic themes, how those stipulations were interpreted became important. Foreign signatories included instructions on how to conduct business and draft formal written communications; but Chinese officials disregarded the procedural elements.

Treaty of Nanking (1842)

Besides the tales of wealth and riches that Marco Polo brought back to Europe from Cathay, a classical name for China, the Europeans needed motivation to contact China for trade. The Spanish and Portuguese explorers in the 15th century traveled westward to colonize the West Indies and Latin America. In the 18th century, the European motives to expand to India and China was tied to commercial interests of the Dutch and later the British East India Company. To protect the interest of trade, the East India Tea Company had quasi-sovereign powers (Scully 2000, 22).

Treaties between China and European states included protections for peace and for foreigners residing and traveling in China. The protection of citizens developed laws for extraterritoriality, employment restrictions, and religious freedoms. British officials made encouraged trade as ports were opened, buildings erected, tonnage rates were set, and efforts to teach the Chinese how to conduct business was laid out. Specifically pertinent to the Treaty of Nanking (1842) was China paying war indemnities to Britain,

withdrawing British troops from China, and establishing posts for formal communications.

Extraterritoriality involving Chinese and treaty-power nationals, which allowed for the defendant's nationality to dictate trial procedures, was established. 25 treaties out of 64 that involved China mentioned extraterritoriality. Of the 25 only 3 (12%) of the treaties reflected a symmetric extraterritorial jurisdiction. In cases where a foreign national was the plaintiff, an assessor was allowed to proceed along with the Chinese magistrate (D. Wang 2005, 11). Extraterritoriality (*chih-wai fa-ch'uean*) and consular jurisdiction (*ling-shih ts'ai-p'an ch'uean*) were practically synonyms (Scully 2000, 13). The Chinese government confronted attack from British officials surrendering British subjects for crimes against Chinese subjects after 1784. That year, in the Lady Hughes case, the Chinese officials wrongfully executed a British citizen accused of the crime (Cassel 2012, 43). Issues regarding jurisdiction persisted between the British and the Chinese.

Extradition and criminal prosecution involving opium smugglers were prominent. Regarding opium traders, Lin Zexu, a Qing official, addressed Queen Victoria directly to ward off more extensive Western intrusions. Lin, who was against Western imperialism argued for China's right to "law and order" (*fadu*) although the term did not appear in Qing codes (Cassel 2012, 49). Lin's plan to expunge the drug trade was to have merchants be accountable for the goods they sold. In China, Lin attempted to have British merchants sign bonds (*gangjie, qiejie*) promising not to sell opium (Cassel 2012, 50). When Lin destroyed the confiscated opium in May 1839, debate over property rights

ensued. The British government felt entitled to their property and required the Chinese to pay the British for the destroyed opium in the Treaty of Nanjing (1842) after the war.

The negotiation process for the Treaty of Nanjing began on July 23, 1842 after China lost the Battle of Zhenjiang. All negotiations and ratifications of the treaty took place in about one month. The final version of the treaty was signed on August 29, 1842 on the British battleship, the Cornwallis. The strong British navy resoundingly defeated the Chinese. Severe financial mandates dominated the treaty. The British extracted material resources from China as a result of the Treaty of Nanjing. Qi Ying, the imperial commissioner of the Emperor Daoguang, and Yi Libu negotiated the terms of the treaty with Henry Pottinger. The emperor communicated his concern regarding the ramifications of the treaty to Qi Ying that Britain was hospitable to the Chinese for centuries (D. Wang 2005, 12).²⁵ The emperor described how price variance in trade is unavoidable and therefore, “trade and commerce in different places should go by the old rules and there is no need to make changes” (D. Wang 2005, 12).

The Treaty of Nanjing expanded Britain’s commercial interests in China. The stipulations of the treaty included the opening of five additional treaty ports in, China: Guangzhou (Canton), Xiamen (Amoy), Fuzhou (Foochow), Ningbo (Ningpo), and Shanghai in article 2.²⁶ Article 5 directly addressed the abolition of cohong merchant privileges in order for British merchants to have greater access to markets in China. Trade stipulations are further addressed in article 10, which gave free reign to British merchants to set up tariffs as they saw fit. In addition to opening access, the British gained strategic territories in Asia. Article 3 ceded the territory of Hong Kong for British

²⁵ Wang translated this excerpt from the *Zhongguo diyi lishi dang'an'guan*, *Yapian shansheng dang'an shiliao*, 6:114-15.

²⁶ The names of the port within the parentheses are how the ports appeared in the 1842 treaty.

use,²⁷ which affected the development of Hong Kong. The war indemnities that China had to pay totaled 21 million silver dollars; articles 4 through 7 directly addressed indemnities. The Chinese had to pay the British “the sum of 6,000,000 of dollars, as the value of the opium” lost in the war (art. 4, Hertslet 1908, 8). Article 6 requested China to pay 12,000,000 for war indemnities, and article 7 instructed China of the payment plan.

Article 10 spelled out the primacy of trade. The standards for fair and transparent trading regulations were left intentionally ambiguous. The treaty did not define “regular tariff of export and import customs and other dues” that are to be “publicly notified and promulgated for general information” (D. Wang 2005, 13).

Even with economic claims being central to the treaty. The tone of the treaty was gain preeminent control over the Chinese in a paternalistic nature. The first article of the treaty, similar to others in the study inserted a statement of peace and friendship between contracting nations. It mutually defined an interest in peace. The British language version of the treaty used in some cases comical phrasings such as in article 3 such as “It being obviously necessary and desirable that British subjects should have some port at which they may careen and refit their ships” (Hertslet 1908, 8). The phrasing of such requests demonstrated the mixture of pedantic mannerism in which the British approached treaty negotiations with the Chinese and the freer style for legal writing that existed in the 19th century.

The imperial commissioner, Qi Ying, and British representative residing in Hong Kong, Henry Pottinger, signed a supplemental treaty to the Nanjing agreement on July 22, 1843. The Treaty of Bogue in 1843 ensured the five ports of Canton, Fuchow, Amoy,

²⁷ Article 4 of the Convention of October 24, 1860 (No. 8) and the Convention of June 9, 1898 extended the use of Hong Kong.

Ningpo, and Shanghai were the sole ports open for trade (art. 4, MC 1917, 391). According to the British, the most-favored nation clause was a necessity at Bogue (Cassel 2012, 52). British subjects were allowed to rent property and reside “without molestation or restraint” in the five port cities according to the “Treaty of perpetual Peace and Friendship” (MC 1917, art.7). The “lawless Natives of China” who might have committed crimes against the Chinese government cannot take refuge on British vessels or in British residences (MC 1917, 393, art. 9). The British government stipulated that extradition rights should be symmetric. Extraterritoriality was an explicit condition of article 13, but it did not introduce personal jurisdiction (Cassel 2012, 52). Most of the 17 articles in the Treaty of Bogue referred to the matters of trade and commerce.

The treaty between the United States and China distinguished criminal activities versus civil jurisdiction. The United States government signed the Treaty of Wangxia (1844) to take advantage of terms that the British negotiated with the Chinese. Here the drafters wrote that the two nations hoped to establish friendly relations “by means of a Treaty or general convention of peace, amity, and commerce” (MC 1917, 677), since it was difficult to inculcate the Chinese with European tenets of international relations that was based on contractual agreements. The second article of the treaties permitted the U.S. the right to enter the five treaty ports, which Great Britain gained access to after the Treaty of Nanjing. U.S. government’s aim with the treaty was to gain trading and commercial resilience in China. The Americans also clarified the language on extraterritoriality. In article 21, the treaty stated the principles of consular jurisdiction (Cassel 2012, 53), where the United States government stipulated that Chinese citizens who committed a crime against Americans should be tried under Chinese law.

Conversely, Americans who committed crimes against the Chinese should be tried under American law. Opium was banned for trading and the U.S. government had to turn over any American smugglers to the Chinese authorities (Cassel 2012). But the measure to curb the opium trade remained ineffective (Cassel 2012, 54). Similarly, the Treaty of Huangpu between the French and the Chinese in 1844 stipulated more clearly which acts were considered crimes (Cassel 2012, 54). The treaty also resulted in decriminalizing Christian activities in China.

In sum, the treaty of Nanjing made China pay for a war that it had lost. Also China's interiors were damaged and the central government lost control as an authoritative anchor. The treaty introduced new concepts such as the most favored nation clause that other foreign countries used in China to benefit from low trade tariffs. The treaty also extended consular jurisdiction and extraterritoriality to foreign nationals who may have committed crimes in China. After the treaty, China was unable to block the influx of foreigners interested in trade, proselytization, and intellectual exchanges. The treaties were unequal because the British uprooted past forms and required the Chinese to learn new methods under the guise of progress because the British promoted that distinct mode. The mode followed suit with the world society approaches to nation-state formations. For China, the process of adopting Western laws was slow and painful.

The next trial in China's relations with the British was the Arrow War. The Arrow War (1856-1860) began when Qing officials arrested 12 Chinese crewmen aboard Arrow on suspicion of piracy with an expired British registration. Sir John Bowring, the Governor of Xianggang, attacked Guangzhou after the incident. The Treaty of Tianjin (Tientsin) concluded the war. Many other countries, including the United States, France,

Germany, Portugal, Denmark, Spain, Japan, Peru, and Brazil, signed a version of the Treaty of Tianjin with China after Great Britain.

Treaty of Tianjin (1858)

The Sino-British Treaty of Tianjin further laid out the types of trading and tariff regulations that signified the period of unequal treaties in China. Even though China had signed several prior treaties, the Treaty of Tianjin (1858) was still considered a mere formality to the Chinese government.²⁸ The treaty to Chinese officials was performative and it was used to have foreign troops withdraw from China quickly (D. Wang 2005, 17). One Chinese negotiator at the time, Gui Liang, wrote that “the treaties of peace with Britain and France cannot be taken as real,” and dismissed the treaties merely as a “few sheets of paper,” and that they can “henceforth be treated as rubbish” (D. Wang 2005, 17). This and other proceeding treaties frequently mandated that the Chinese cared about written communications in legal and commerce intercourse. The Europeans, who at this time in China were mostly British, found China’s unwritten but locally understood rules of commerce difficult to follow. The emphasis on documentation in business necessitated articles to provide detailed instructions for the Chinese. Reciprocity was not a main emphasis. Westerners did not have to adopt Chinese customs: for instance, English merchants were not required to understand Chinese business norms such as verbal agreements or the performance of ceremonial acts of deference to the emperor. Treaties had standing in the international community, in particular among other Western nations though treaties were less important in Asia.

²⁸ An important issue worked out in the treaty dealt with the residence of British officers in Beijing, which had special significance in the “Forbidden City.” The non-indigenous customs were not respected because foreigners were barred from entering Chinese communities.

The Treaty of Tianjin in 1858 signed with Britain accounted for the “existing misunderstanding” between the two empires (Hertslet 1908, 19, art.1). The emphasis in the Treaty of Tianjin sounded paternalistic. The economic primacy of the 1842 treaty was reinforced. Adding to the prior arrangements, several other ports, Newchwang, Taengchow, Taiwan [Formosa], Chawchow [Swatow] and Kiungchow [Hainan], were opened for trade, residence, and for even building churches in 1858 (art. 11). Article 24 and 26 revised the tariff on import and export duties. There the 5% ad valorem tax was considered unreasonable due to the falling value of merchandises.²⁹ Article 31 exempted British owned vessels from paying tonnage fees if the ship left within 48 hours of arrival. Foreigners trading within China had privileges such as avoiding the payment of *likin*, which is a form on transit tax that provincial officials devised (D. Wang 2005, 18). *Likin* dated back to 1853 but the British officials were allowed to pay a 2.5% fixed *ad valorem* according to article 28, rule 7 of the Treaty of Tianjin (Gray 2002, 91).

The Treaty of Nanjing and the supplemental agreements confirmed the nature of binding contracts. The British instructed the Chinese on the practices of international law. The prior Chinese ministers’ approaches of considering treaties as “rubbish” was unacceptable (Wang 2005, 17). After appeasing to the increased demands of the British, the mystique of the “Forbidden City” was disassembled. China accommodated foreign agents of Great Britain in service of “Her Majesty’s Mission” (MC 1917, 405, art. 3). The representatives were “at liberty to choose his own Servants and Attendants, who shall not

²⁹ This article was further revised in the Agreement of November 8, 1858 (no. 7) and again in the Tariff Agreement on August 29, 1902 (no. 27).

be subjected to any kind of molestation whatever” (art. 3, MC 1917, 406).³⁰ The third article of the treaty allowed British agents to reside in the capital city of Beijing, where the agent “shall not be called upon to perform any ceremony derogatory to him as representing the Sovereign of an independent nation” (MC 1917, 405). The explicit indication against interference exhibited how transgressions had been a problem in the past. The British hoped to erase the stigma of Chinese citizens who worked for foreigners and requested that the Chinese government “place no restrictions” for such employment (art. 13, MC 1917, 409). The British Treaty of Tianjin did not assure reciprocal treatment of Chinese citizens in Great Britain if there were any. The opportunity for the Chinese to travel to Great Britain was not discussed in writing. Articles 4 through 7 indicated more specifications regarding the conduct of British nationals in China and the privileges allowed to them.

Proper social behaviors were prescribed for criminal procedures. Laws on extraterritoriality remained similar to the Treaty of Nanjing where altercations between Chinese and British nationals required representatives from both nations to act as adjudicators. Disputes in business affairs such as outstanding debts required cooperation from officials of the alleged criminals’ nationality.

To further Britain’s cultural reach in China, special arrangements were made for religious freedoms. With article 8, the British government secured the right to practice the Christianity in China because it “inculcates the practice of virtue and teaches man to do as he would be done by” (MC 1917, 407). The mission of the British extended

³⁰ The Chinese language of the text does not imply a sexual connotation as close to the “molestation” translation in the English. Further, molestation in its 21st century usage is different from the writers’ use in the early 20th century.

beyond trade, and an effort to “correct” the existing social norms of China became implicit in the treaties.

Language is a primary expression of national culture (Anderson 1991). The British requested the use English as an official language for communication (art. 50, MC 1917). The request exemplified systematically heralding English customs to the Chinese and requiring the Chinese to learn English for international transactions. The British government requested that Chinese official documents not refer to the British with the character “yi” 夷 which was often translated to mean “barbarian.” Lydia Liu’s research of the term “yi” demonstrated how the meaning shifted over time. Liu noted that “yi” at times meant foreigner or foreign. Translations near the time of conflict rendered “yi” to mean barbarian (Liu 1999). China called foreigners barbarians, which the British took as an extreme insult. That form of address, however, was common towards any foreign states (MC 1917, 419).

Developing the new language for law occurred gradually in China. William Martin published the Chinese translation of Henry Wheaton’s *Elements of International Law* (1836) as *Wanguo Gongfa* in 1865. Martin, a Presbyterian missionary, was an interpreter for the Sino-American Treaty of Tianjin (1858). He completed the translation in Shanghai in 1862 and acquired proficiency on diplomatic procedures through the work. Wheaton’s work reflected a transition from natural to positive law in Europe (Fassbender and Peters 2012, 460) and the conceptual shift was also introduced in Asia. The translation of legal treatises added linguistic-legal dimensions to the cultural exchanges. Additionally, the increased contacts between Westerners and the Chinese started legally before an aggregate of people could travel.

Commercial Treaty for Maritime and Overland Trade (1882)

After Japan opened Korea to international treaties in 1876, China wrote “unequal” treaties that downgraded Korea’s sovereign status. The 1882 treaty between Korea and China recalled past tributary relations of inequality rather than implementing Western ideology of sovereign equality. Dating back to the 12th century, Chinese rulers called Korea, the “little brother” (Rockhill [1905] 1970, 3, Gries 2005, Gries et al. 2009). The tribute system, according to China, provided Korea with guidance and economic aid.³¹ The 1882 and 1883 treaties reinstated China’s role as a guardian. The Chinese situated Korea as a “tributary Kingdom” that received “certain advantages” via association with China (MC 1917, 847).

The “modern” treaties suspended past advantages although the Sino-Korean treaties differed stylistically from other “Western” treaties in Asia. The treaties fashioned relational changes. The Sino-Korean treaties established rules instead of articles, started with specific claims of historical exchanges instead of stating a general premise of sovereign equality and friendly relations, and did not conclude with procedural instructions on ratification and amendments to the treaties. In terms of content, China wanted the past relations to continue. But China’s power in the region diminished due to its inability to create reliable trading conditions into the interior. Specifically, the Regulations for Maritime and Overland Trade (1882) affected Sino-Korean relations in four ways – 1) the Chinese included reciprocal provisions despite labeling Korea, a tributary state, 2) travel into the interior of either country appeared difficult, 3) fixed tariffs were set, and 4) ban on opium and munitions of war remained crucial.

³¹ The Ming dynasty considered China to be the “father to Korea” whereas the Manchu leaders considered their role to be “elder brother” (Rockhill [1905] 1970, 3).

Table 15 – 1882 Regulations for Maritime and Overland Trade

Articles	Summary of the Final Version of the Treaty
Art. 1	Two sides appoint commissions for ports in Korea
Art. 2	Extraterritoriality – Chinese criminals go to a Chinese judge; Korean criminals go to a Korean judge “for the sake of fairness”
Art. 3	Fixed rates for trade is to be determined; distressed vessels can dock for necessary repairs; in Shantung and Liadong vessels from either country could cruise for trade
Art. 4	Merchants of either country living abroad may rent homes in the port of the other; those traveling into the interior would need passports; transporting native produce from one port to another will accrue a re-importation tax on export duties
Art. 5	People from the interior are free to travel to the ports and back; more rules are sent to “the Throne for decision”
Art. 6	Both sides are forbidden to sell opium and firearms; Korean ginseng in China must come with a written permission
Art. 7	China give Korea temporary loan on steam vessels; Chinese on warships are to be treated as equals to local Korean officials
Art. 8	Treaty has main points only so details are to come

Korea 1891.

First, China relegated Korea’s position as a tributary state (MC 1917, 847). Despite hierarchical language at the beginning of the document, the phrase “on a footing of equality” appeared for appointed port officials (art. 1) and local officials (art. 4, MC 1917, 852). The two sides exchanged diplomats to secure trade (art. 1) and agreed to reciprocal extraterritorial rights (art. 2). Secondly, Chinese officials emphasized the difficulty of traveling into China for land trade. Officials in ports of both countries checked permits for those traveling further, but in China, travels were restricted (art. 4). Custom stations handled smugglers and outlaws and charged outlaws 5% ad valorem on all goods in China (art. 5). China’s geography, new regulations, and slow transfer for information posed a challenge for traveling into China.

The third key change included new tariffs for fishers and taxes for merchants. In general, the 1882 treaty dealt with duties for access to passageways and taxes on goods. The Chinese officials established customs at Hunchun and the border of the Dunhua

County (art. 2). Instead of waiting until the Yalu River froze to engage in trade, the provision allowed for ferries to dock. In P'yŏngyang and Hwanghae in Korea and Shandong and Fengtian in China, the fishermen needed special permits and tax payments that were not required before. Finally, the two sides prohibited the sell of opium and firearms (art. 6) and taxed ginseng at 15% ad valorem. By the 1880s, most Asian nations banned opium trade. One exception was found in the Treaty of Peking (1869) where the Austro-Hungarians could sell opium in China if the Austro-Hungarians paid a tax.

Unlike treaties between European and Asian countries in the 19th century, where the two sides were biased because they were unfamiliar with each other, a history of inequalities promulgated new forms of biases between China and Korea. The historical legacy created a “durable inequality” (Tilly 1998, Shin 2010). The increased intrusion of European foreigners in China strengthened China’s resolve to maintain dominance over Korea. In sum, the treaty poised China as a suzerain state that benevolently granted Korea reciprocal access to extraterritorial jurisdictions but wrote rules that protected China’s interiors and rituals. The Chinese discouraged travel into the interiors except when officials paid tributary gifts. The tariffs on goods such as horses, hides, paper, and cotton were set at 5% ad valorem and fishermen paid biennially for port permits. The mutual ban on opium and munitions trade oriented the two countries towards peace.

Diplomacy served commercial goals. The joint commissions near the Korean ports were to follow “observance of etiquette” (art. 1, Korea 1891, 64) and the diplomats were to act “on a footing of equality” (art. 1, Korea 1891, 65). The 1st article of the Treaty agreed to send diplomats and commercial envoys to the other’s country. The 2nd article of the treaty discussed manners for settling disputes and who had jurisdiction over

claims. With the 4th article, the cities of Beijing and Seoul were designated as open cities that allowed Americans and Europeans to enter for trading purposes as well. Passports were required for other forms of travel (MC 1917, 851). With increased foot traffic of foreigners in China, the legal procedures after criminal incidences tightened. The extraterritorial jurisdiction favored the Chinese in that a Chinese convicted in Korean ports then the Chinese had jurisdiction over the matter but the reverse was not true. If a Korean was accused of crimes in a Chinese port then the Chinese still had full jurisdiction.

Commercial stipulations dominated the bulk of the treaty. The 3rd article addressed customs issues such as fishing rights. The article also discussed measures to aid in cases of natural disasters and equipment failure. In the past, China had allowed fishermen from Korea to travel without paying taxes as partial condition of their tributary state relations. Even for returning distressed vessels, the Chinese accrued the cost of the damages. Because Westerners weakened China's economy, the costly burden of the tributary state relations were abandoned and the trade along the Yellow Sea and Bohai coasts were opened to incite the Chinese economy.

The fourth article of the treaty discussed the taxes applied on goods for trade. Korean merchants had to pay a Chinese domestic tax called *lijin* as a result of this treaty. The 5th article discussed procedures to tighten the frontier trade to tariff trade. A 5 per cent ad valorem tax was applied to all goods except red ginseng (*hongshen*), a medicinal plant from Korea. In the 6th article of the treaty the ginseng was permitted for trade at 15 per cent ad valorem. The two countries forbade opium trade. As discussed in chapter 2, many treaties involving different nations also banned the opium trade. In the 6th article,

the issue of clandestine trade was also mentioned. The goods if traded clandestinely were to be confiscated (MC 1917, 852).

Portions of the treaty explicitly underlined China's infantilizing treatment towards Korea. In article 7, the Chinese officials addressed how "[K]orea does not yet possess ships of war or mercantile steamers" (art. 7, MC 1917). The lack of technological advances kept Koreans from accessing more convenient travel routes. Korea was allowed to borrow steamships that the Chinese would guide through proper trading ports but the Koreans would pay all expenses involved for the transport. The 8th and final article of the treaty recognized that the Superintendent of the Northern Trade and the King of Korea could revise the treaty, implying that the treaty ended on a customary note.

The past under the Chinese suzerain rule may have established Korea as "little brother" to China, but the tribute system granted Koreans more aid from the Chinese in matters of trade. The 1882 treaty demanded the Koreans to pay more tariffs. The tributary state relations had allowed Koreans to trade without paying the tariffs, but the new legal arrangements required Koreans to follow procedures similar to what the British had in place for the Chinese a few decades earlier.

Twenty four rules for the traffic on the Frontier (1883)

The "durable inequalities" (Tilly 1998) perpetuated with the Twenty-four Rules for the Traffic (1883). Three major themes of the 1883 agreement included 1) receiving tributary gifts, 2) empowering local authorities, and 3) clarifying trade conditions. The conditions of the 1883 document challenged the prominence of sovereign equality noted in international relations because China mentioned Korea's status as a tributary state throughout the list of rules. Additionally, Confucian law preferred centrality versus desperate pockets of power (Shaw 1981). China's central government reluctantly granted

more autonomy to local officials. The rest of the rules focused on new tariffs and regulations that Korea withstood. In 1883, China established free trade at the ports while re-appropriating Korea as a technologically backward and preferentially subordinate nation in Asia.

The Chinese wrote how Korea benefited as a tributary state to China (rule 1, 1883, MC 1917, 854). Korea as a “quasi-Chinese territory” (Rule 14, MC 1917, 860) stopped enjoying past privileges. The 24 rules noted how ports differed from overland trade. With regards to traveling into the interior of China, diplomats traveling with tributary gifts had special assistance (Rules 8, 11, 15, and 19). Though tribute trips required passports (Rule 8), the travellers had permissions to use old tribute routes that were not open for commercial activity (Rule 11). Peppering the rules with the tribute customs juxtaposed the changing conditions for trade with classical hierarchies of China’s cultural dominance.

Careful attention to language in the legal document highlighted China’s desire to formalize the hierarchy. China re-established itself as the acme of Asian society based on how China mandated their “official” name. Korea addressed China as *tiāncháo* (heavenly court) or *shàngguó* (superior country). China was not called *zhōng* (center), and Korea was not *dōng* (east) (Rule 23, MC 1917, 863). Korea was *cháo xiǎn guó* (imperial court country) and *guìguó* (your respected country). Heavenly and superior to Korea, China transposed the hierarchy into domestic governance.

China’s domestic law followed order that suited the goals of the dynasty at a given time (Nakamura 2004). In 1882, the officials sent details to the “Throne for decisions” (art. 5, MC 1917, 851). China’s vastness required the central bureaucracy to

delegate powers to local authorities. Still, the checks on the bureaucrats slowed commercial reforms in China. However, the 1883 rules established ways for local officials to maintain borders (Rule 4), collect duties (Rule 5), investigate robberies (Rule 7), confiscate illegal goods (Rule 16), and directly deal with sellers and purchasers (Rule 22). Ultimately, local authorities were to use their best judgments to decide on rules unmentioned in the document (Rule 24). Wisdom of the throne dissipated to keep pace with trade.

The 1883 Treaty between Korea and China further instilled an unequal relationship that highlighted the intra-Asian relations of this time period. The document established 24 rules, but the document better handled the recognition of mutuality and reciprocity than what was articulated in the 1882 document. In 1883, the Jilin province of China was reorganized to facilitate trade around the borders. With the first article of the document, the merchants of Jilin could travel to Hoeryong and from there to Kyongwon periodically to expand the reach of the trade. The Chinese officials hoped that the measure would increase the profits for merchants of Ninguta, the provincial capital of the Jilin district.

Table 16 - 24 Rules for Frontier Trade of 1883

Rules	Summary of the Final Version of the Regulations
Rule 1	Both sides are on the same footing though Korea benefited as a tributary state
Rule 2	In Liaodong, merchants need permissions to move goods to any parts of China; foreigners are forbidden from entering the frontiers
Rule 3	Chinese have rights to sacred fishing areas in the Yalu River and Koreans are forbidden to fish there
Rule 4	Koreans cannot build homes in Liaodong
Rule 5	Superintendents used to collect duties on customs, there will be additional collectors plus military and civil governors in Moukden
Rule 6	Local authorities will deal with offenses regarding money based on existing laws
Rule 7	Investigation of robberies will exist at custom stations; proper examination of papers needed

Rule 8	Tributes from Korea to China are exempt from payment of duties
Rule 9	Red ginseng from Korea taxed at 15% ad valorem; cows and hides are 5% ad valorem; necessities of life such as food are duty free
Rule 10	Trade use to be free but now both must pay full duty initially
Rule 11	Old tribute roads are closed for all purposes except for trade
Rule 12	You can use frozen rivers as roads
Rule 13	Reciprocal trade where both sides should present passports with notes on what the merchant intends to buy
Rule 14	“[K]orea is regarded as quasi-Chinese territory” yet Liaodong merchants cannot trespass into Korea
Rule 15	Diplomatic officials traveling with goods are exempt from tax; for merchants, it is illegal to buy goods at a Korean port and transport it overland
Rule 16	Clandestine trade for goods such as opium and munitions of war are to be confiscated
Rule 17	Gold and silver can be brought in for exchange; bullions, leafs, etc are taxed at 5% ad valorem
Rule 18	5% ad valorem for most goods – products of the sea, hides, leather, cotton per piece, paper, copperware, chinaware etc
Rule 19	Chinese military will accommodate Korean tribute gift givers
Rule 20	Promise to use standard scales for weights and measurements at both ports of Chung-kiang and I-Chou (Yi-jiu)
Rule 21	Night traffic is dangerous; avoid traveling at night to reduce fraud
Rule 22	Deal with official brokers; in Chung-kiang do away with brokerage at frontier stations; seller and purchaser shall deal with the other directly
Rule 23	Korea may refer to China as 天朝 [tiāncháo] (heavenly court) or 上國 [shàngguó]. China is not to be referred as 中 [zhōng] and Korea is not 東 [dōng]. Korea is known as 朝鮮國 [cháo xiǎn guó] (imperial court country) and 貴國 [guìguó] (your respected country).
Rule 24	Local authorities on either side will settle disputes not listed in the regulations

The 1883 document as an extension of the 1882 treaty shaped China’s efforts to establish free-trade in the interiors the while re-appropriating Korea’s position in the Asian international system as a nation that was technologically behind and preferentially subordinate to Chinese demands. Permits to travel into Korea’s interior has been made 19 times in 1884 and about that many were filed in 1885 (Larsen 2008, 119). After losing a war to Japan, China’s position within Asia was recognizably weak.

Consequences of the Treaties

China's two agreements with Korea demonstrated three themes. First, China maintained its role as a suzerain state for Korea. Second, the documents illustrated China's weakening central bureaucracy. Third, after 1883, Koreans paid "new" commercial taxes and "old" tributary gifts to the Chinese. China reluctantly adopted new customs and embraced their standing in the old Asian structures. Sino-Korean treaties omitted finessed passages regarding friendly relations and equal sovereignty. The direction of Sino-Korean relations disappointed Japan because Japan wished to trade with Korea directly without China's interference.

Beyond Asia, China's presence in the international treaty systems multiplied. China's relations with Latin America yielded symmetric relationships unlike the asymmetries that China endured from European states. The Sino-Peruvian Treaty of Tianjin (1874) exemplified China's reactionary approach to foreign policy. Chinese citizens worked in Peru for years, mainly mining guano, but the 1874 treaty created protections for Chinese citizens after years of mistreatment (Kagami 2001). The Treaty of Washington (1899) between China and Mexico granted each side reciprocal MFN status, disaster relief, consular representation, residential rights, and property protections. China and postcolonial Latin American states' comparable status in the international system generated the mutually beneficial treaties. Structurally equivalent partners at the international and regional arenas motivated China's economic growth (Borgatti and Everett 2000, Snyder and Kick 1979, Zhou and Park 2012).

By the early 20th century, China wrote treaties with over 17 nations (D. Wang 2005, 10). The Western intellectuals referenced the "childlikeness of the yellow race" (Chamberlain 1912) of Chinese and denigrated the ethnicity as "double-tongued" cheats

(Steinmetz 2003). The Taiping (1850-1864) and Boxer (1900) Rebellions confirmed China's resistance towards Western influences. Europeans failed to address the Chinese as equal statesmen (Gong 1984), so China's avoidance of Western legal systems highlighted China's comfort with the past tributary system.

In sum, even during the early 19th century, China viewed itself as a centrally located, culturally refined, and morally superior nation compared to Great Britain, the United States or Japan. The 1882 treaty between Korea and China reaffirmed rather than adopt new international legal norms, namely of sovereign equality. China's self-assessment did not preserve its national welfare as the lure of commercial riches lessened the stigma of working as a merchant among the Chinese.³² China's late and reluctant adoption of the legal arrangements such as lowered tariff rates and open trade, the Chinese lost time and opportunity to benefit from the system. Falling behind the new ideology of the era, the Qing dynasty of China failed to adapt to a new process of globalization, which emphasized commerce.

China's role in Asia transformed in the 19th century. In practice, extraterritoriality did not end in China until 1946 (Chang 1984). China's treaties with Korea in 1882 and 1883 indicated China's role in implementing international reforms in Korea even without much consultation with the Korean government (D. Kim 1976). The tragedy of the various rebellions, which occurred after the opium wars, stalled China's friendships from developing with Western nations. Before and as a result of the insurrections, Western officials castigated Chinese citizens as untrustworthy partners.

³² Confucian society did not consider trade as noble work.

Taiping and Boxer Rebellions

The Taiping (1850-1864) and Boxer (1900) Rebellions confronted head-on the grave struggles that the Chinese felt towards the foreigners. The Taiping Rebellion having Christian origins is debatable (Gray 2002, 61). In 1859, Hong Rengan wanted to distill more orthodox definitions of Christianity in China (Gray 2002, 71). The Chinese were manufacturing claims about Christianity to gain sympathy from Westerners. The leaders idealized equality yet women in the group were treated as property and exchanged as rewards after military victories (Gray 2002, 61). The Taiping Rebellion was a form of nativist revolt and managed to takeover Nanjing in 1853. Initial retellings of the Taiping Rebellion emphasized the rebellion as a political movement resulting from the rebels' renouncement of the Tartars' oppression (Mason 1939, 78). The Taipings planned a northern attack on Beijing and a Western attack on the Yangtze River (Gray 2002, 65). The Taiping rebels reigned in Nanjing from 1853 to 1864, but the Qing army bombed the city to remove the rebels (Wooldridge 2009, 84). After the destruction of Nanjing in 1864, Zeng Guofang organized a reconstruction plan from 1864 to 1872. Total number of casualties is approximately 20 million (Michael and Taylor 1956).

The Boxer Rebellion started in northern China in 1899. Members of secret sects coopted to form the Boxer Rebellion. In 1899, the rebels attacked Chinese Christian converts. In the central and southern reaches of Chinese, the rebels were quickly suppressed (Gray 2002, 137). Foreign troops fought off the rebels. From June 14 to August 14, the rebels were in Beijing where the foreign troops battled the Boxers until the imperial troops arrived. Rummel (1991) estimated that 250,000 persons who were Chinese civilians, foreign soldiers, foreign civilians, Christian missionaries, and rebels, died from 1899 to 1901 (40). The multiple rebellions urged the Chinese government to

open bureaus devoted to selling titles, offices, and degrees to raise funds to defend against the rebels (Kaske 2011). The insurrections prevented China upholding appearances that acknowledged them for meeting “standard of civilization” (Gong 1984). The Boxer Rebellion directly attacked foreigners, which created more tensions between China and Western states interested in establishing commercial and diplomatic ties.

Conclusion

The European legal system was not welcomed in China. While China had a streak of unfavorable treaties, mostly involving Great Britain, in the mid 19th century, the Qing bureaucracy’s resistance to change accentuated China’s downfall. After losing the Sino-Japanese War in 1895, the Chinese handed over the control of Taiwan to the Japanese. China and Taiwan became agricultural outposts for the Japanese to produce rice as an export crop to feed the Japanese. Japan’s agricultural policy included improved seeds and fertilizers to outsource growing crops (Myers and Yamada 1984). The later development of Japanese industries in China signaled the *de facto* colonial status of China.

In the early 20th century, China fell prey to multiple spheres of influences that included British, German, and Japanese entrepreneurs and diplomats. Extraterritorial protections for foreigners in China existed until 1928 and mandated the Chinese to become second-class citizens in their own nation. China’s weakness strengthened Japan’s ability to withstand colonialism on its own. Further, Japan’s ability to defeat Russia in 1905 signaled to Western nations that Japan desired diplomatic equality with European nations. China nor Japan were not immediately accepted into the “family of nations;” however, the economic growth that Asia achieved in the late 19th century made Asian nation-states valuable trading partners. In the next chapter, I explore Japan’s

navigation of the unequal treaties. Japan overcame initially poor trading conditions to later pave a path towards becoming an imperial power in the Pacific.

CHAPTER 4

JAPAN: THE MODERNIZING LEGAL FORCE

Japan had not been a hegemonic power in Asia prior to the 19th century. Japan's turn towards imperialism is surprising. Japan's treaty with China in 1871 was mutually beneficial and equal (Fogel 2009, 6). But after a few years, the dynamics between Japan and China shifted towards asymmetries that benefitted the Japanese. Japan explored Taiwan in 1874 to scope out the potential colony, forced Korea to the Treaty of Ganghwa in 1876, and annexed the Ryukyu kingdom as the Okinawa prefecture (Zachmann 2011, 53). The changes within the Japanese ruling elites reoriented national goals towards imperialism.

Background on Japanese National Identity

Unlike Korea, Japan did not live in China's shadow. Confucianism and Buddhism, according to Prince Shotoku in the 7th century, were "only secondary to Shintoism" (Totman 2000, 189). Japan's state sponsored religion of Shintoism added to national variants of Buddhism set Japan apart from China. Still Confucianism influenced much classical philosophies in Japan. A strong national culture developed around the 16th century; intellectuals indebted to the Chinese bemoaned a weakness in Japan's national ideology. The Mito School of the 18th century revised narratives on Japan's foundational history. Intellectually, Japanese scholarships distinguished themselves from Chinese ideologies that supremely upheld the emperor. Japanese scholars such as Miwa (1973) considered Japan to be the "Middle Kingdom" not China (Saaler and Szpilman 2011, 9).

In response to Chinese Confucianism, bifurcated sovereignty of the 18th century carved out Japanese scholars' intellectual position. In Japan, Confucian scholars such as Hakuseki Arai (1657-1725) discussed the bifurcation in reference to the two ruling figures of Japan, who was the emperor in Kyoto and the shogun in Edo. Though the emperor's authority was merely nominal, Hakuseki discussed the Japanese government in terms of "substance" and "name" elements, which were derived from Confucian political philosophies (Nakai 2005, 392). The use of the term sovereignty was situated in the Confucian context and not akin to Westphalian sovereignty.

Around the 16th century, Portuguese and Dutch citizens resided in Nagasaki and Hirado, respectively. Early European settlers were Christian missionaries. Christianity was banned in 1587 and harsh persecutions occurred starting in 1597. In the 1780s, "Dutch Learning" (*rangaku*) influenced the study of medicine and astronomy. The shogun limited scholars' contact with *rangaku* to disrupt the attempts to promote Christianity (Inoguchi 2006, 7). The shogun planned to curb Christian activities in the 17th century.³³ The access to information was key in the economic and intellectual reconfiguration of Japan. Ultimately, the shogun issued five decrees between 1633 and 1639, which led to national seclusion and closed Japan from international trade (Hiroshi and Akira 1990). In the 1640, Japan became a closed country (*sakoku*), which fostered Japan to develop its own interpretations of Dutch and Chinese teachings.³⁴ The Japanese

³³ Whereas Chinese scholarship entered Japan during the Tang era (618-906) and took centuries before Japanese scholars accepted them as truthful, Dutch teachings in the sciences became highly regarded in Japan after two centuries.

³⁴ Rangaku developed and became popular among scholars such as Kato Hiroyuki in the 19th century.

rarely travelled westward, but Dutch merchants were present in isolated regions, and diplomatic relations with Korea and China continued (Toby 1984).³⁵

Even though Dutch and Portuguese merchants abounded in Asia, Chinese and Japanese merchants were unable to communicate in European languages. The ways in which Asians acquired knowledge from Europeans were multilayered. Pro-Europeanists such as Honda Toshiaki (1744-1821) learned Western methods for astronomy and geography while maintaining a belief in Confucianism and Japanese social order. Much of the accepted Dutch studies were syncretic blends of new and native beliefs. In 1720, foreign books were no longer banned in Japan and new medical treatises, such as *The New Book of Dissection*, were translated into Japanese for wider use. A Dutch-English dictionary appeared in print in 1745. Maeno Ryotaku and Sugita Genpaku dissected a corpse in 1771 to further their studies of Dutch texts. Japanese scholars such as Sugita Genpaku compared Dutch learning with Chinese learning, which too was once foreign to the Japanese. Sugita Genpaku, who wrote during the 17th century, was surprised with the rapidity with which Dutch teachings in the sciences were accepted in Japan, since Chinese learning took centuries to become assimilated into Japanese learning, beginning in the Tang era (618-906).

Mito scholars of the 18th century promoted nationalist ideologies that permutated towards imperialism of the 19th century. Aizawa Yasushi wrote of Japan as the

“Divine Land – the realm where the sun rises, where spirits are high, where the grandson of the sun goddess rules as a supreme emperor since time immemorial... [Emperor] has been the leader of the earth and is to rule over all countries of the world” (Aizawa from *Shinron* [New Theses, 1825] in Joos 2011, 67).

³⁵ Also in 1640, the Japanese were mandated to register at a Buddhist temple (Tignor et al. 2008, 615).

Aizawa explained that while the emperor had limitless benevolence, the “Western barbarians” trampled the Asian landscape (Joos 2011, 67). Granted, the opinions of the right-wing scholars associated with *Genyosa* (Dark Ocean Society) proposed the expansion based on jingoistic tendencies, the views became pronounced as the Japanese military sent troops to explore Taiwan, Korea, and northern China.

Confucianism distinguished four hereditary statuses of “warrior-rulers, peasants, artisans, and merchants (*shinokosho*)” (Totman 2000, 225). In China, Korea, and Vietnam, the Confucian literati loomed superior to the warrior (D. Kang 2010). Because of this slight distinction, Japan departed from Confucian interests towards commerce. Confucianism served as the model for organizing the political sphere of Japan. The Japanese feudal system based on allegiances and loyalties interpreted Western laws to be disrespectful at times. Japan’s conception of international relations did not conform to the Sino-centric worldview that China and Korea accepted. Zen Buddhism, which the Chinese influenced, grew throughout the 13th century but the nationalistic religion of Shintoism intensified in Japan. Within Japan the absolutism of sovereign rule was contested so imagining the Chinese emperor as the central authority figure became difficult.

Though Huntington (1993) defined Japan as a civilization separate from the Sino-Confucian order, Confucianism influenced conduct within Japanese society historically. Even if the official stance was to avoid Chinese teachings, the pervasiveness of Chinese philosophy was so great that Confucianism colored Japanese philosophies. Allegiances and loyalties, which were prominent in neo-Confucianism, were the basis of Japanese feudalism. Confucianism could have conceptually unified Asia. Trimberger (1972)

rather simplistically stated that the Japanese were “racially, religiously, and culturally homogenous” (192). The homogenous theory has been widely refuted.

The Japanese had never had a singular religion. Buddhism, Shintoism, and Confucian beliefs existed contemporaneously. Furthermore, the ethnic homogeneity was forcibly realized with the extermination of the Ainu people (Hirano 2009). Japan, according to Fukuzawa Yukichi, insisted on leading the rest of Asia towards progress instead of waiting for the rest of Asia towards Western models (Inoguchi 2006).³⁶ Specifically in the realm of pan-Asianism, Fukuzawa sought to improve conditions for other Asian countries by adopting Western models. Fukuzawa’s “Depart from Asia” (*Datsu A-ron*) attributed Asia as backwards and the West as progress. Fukuzawa’s *Datsu A-ron* challenged Japanese leaders to guide other Asian countries towards Western progress (*Jiji Shimpō*, March 16, 1885).

The ideology of pan-Asianism appeared later as the Japanese promoted a strong regional identity through colonialism. Through the process of assimilation known as *doka*, distinct identities of each nation-state were diminished in favor of Japanese perceptions. Assimilation artificially injected the flavor of creating kinship analogous to the colonial mission. Matsuda Koichiro (2011) attributed the rise of pan-Asianism as a result of the Opium Wars in China. Some scholars traced Pan-Asianism further back to the 16th century. Yi Ki-Baek (1984) interpreted the Hideyoshi invasions of Korea in 1592 as an early unification endeavor in Asia. Conroy’s account of Japan’s annexation of Korea insisted that Japan had planned the colonization for centuries (Conroy 1960),

³⁶ Fukuzawa stated that “We cannot wait for our neighbor countries to become so civilized that all may combine together to make Asia progress. We must rather break out of formation and behave in the same way as the civilized countries of the West are doing... We would do better to treat China and Korea in the same way as do the western nations” (Inoguchi 2006, 10).

however the theory has been widely rejected (Dickinson 2002). Nationalism alone did not explain the implications for trade that territorial expansion posed.³⁷

Even if nationalism motivated Japanese territorial expansion, the Japanese needed material resources to do so. The transition from rice to money economy took form in the 18th century. Hiroshi and Akira noted that the Tokugawa (1600-1868) economic model was unable to sustain the growing population and the expanding basis of production through the cumbersome manner of a rice based economy. The rice production system dictated how the samurai class collected taxes from farmers and merchants. Transporting rice from outer regions to Edo created logistical challenges. Japan's unstable economy from 1789 and 1853 fueled a transition from rice based to coin based currency. Though a few daimyos had authority to mint coins used within their jurisdictions, the shogun had sole legitimacy in minting currency and had control over the national mines. The silver mines in Japan were depleted in the 1680s. Rice prices fell in 1819 and 1820, which weakened the shoguns' rights on rice levies, impoverishing feudal houses. From 1818 and 1830, the officials made a poor decision to debase coin currency to make rice more valuable (Cullen 2003, 136). The decision precipitated discontent among the merchants. Japan's currency eventually shifted from a rice-based agricultural economy to a coin-based money economy. The influx of silver that the Chinese experienced also entered into Japan and Korea slowly.

External threats grew as news of China's trade and wars with Western powers reached Japan. Similar to China's experience, Japan's earliest treaties with Western nations signaled moments of national humiliation. In the early 19th century, Japan was an

³⁷ In 1609, Japan and Korea signed the Kiyu Agreement, which guided interstate relations until 1876. It advantaged Korea as a mediator to China.

isolated nation with different feudal factions warring with one another for land and resources. The Tokugawa shogunate, residing in Edo, defended strict class hierarchies. He passed several laws dictating dress codes and acceptable festivals for subjects of varying social classes (Shively 1965). The strict adherence to duty in Japan was not due to longstanding beliefs in neo-Confucianism. Instilling the mentality of a status hierarchy was key. The founders of the Tokugawa regime inculcated a sense of duty to young children and subjects to make an ideological distinction from the preceding regime.

The ideology of the Tokugawa regime increasingly departed from the realities of the situation in Japan. The low ranking samurais wanted change as much as the Western envoys that wished to enter Japan. Merchants began to eclipse the wealth of low ranking samurais. By the mid 1850s, many low ranking samurai held no land. The low ranking samurai were outsiders within the elite class; the samurai class no longer had strong group cohesion nor a sense of belonging. Near the end of Tokugawa rule, farmers shifted to new cultivation methods such as grafting, irrigating fields, and planting more cash crops. Japanese commoners began to hoard rice after the Ansei treaties because the fall of the political economy seemed viable as feudal lords were losing power (Auslin 2000, 77). Farmers did not rely on subsistence agriculture. The merchant class capably influenced the low ranking samurai and grew dissatisfied with the low status attributed to the merchant class.

Exploring the options for trade with more Western partners emerged in the early 19th century. The Russians pressured the Japanese to open its ports for trade, but the Japanese government feared food shortages resulting from exportation of rice crops. Because rice was tied with currency, rice trade was prohibited. Ezo, a modern-day

Hokkaido, grew wary of Russian naval threats. The Japanese experienced a few incidents involving foreign vessels in the early 19th century. In 1808, the British warship, *Phaeton*, appeared off the coast of Nagasaki. The American merchant vessel of *Morrison* appeared in Uraga and Kagoshima in 1837. These efforts did not result in official diplomatic communications. The Tokugawa bafuku did not want foreigners to enter Japan. He preferred to maintain the social structure's legitimacy so that the samurai could remain at the top of the hierarchy (Pratt 2007, 86). Also, the bafuku were weary of national security as Catholic missionaries in the 17th century disrupted Japan's traditional value structures (Pratt 2007, 87). From 1854 to 1874, Japan's treaty relations with other nations reflected net losses for the Japanese. By opening ports for foreigners to use and allowing the foreigners to reside and conduct business inside Japan, the Japanese made concessions to the treaty partners.

Table 17. General Distribution of Japanese Treaties by Decades

Binned Decades	Count
4) 1841 to 1860	5
5) 1861 to 1880	7
6) 1881 to 1900	29
7) 1901 to 1912	15

Table 18. Distribution of Japanese Treaties by Type

Types of Treaties	Count
1) Peace	1
2) Commerce and navigation	10
3) Friendship	20
4) Extradition	0
5) Arbitration	1
6) Delimitation and protectorate	12
7) Consular conventions and other	12

Treaty of Kanagawa (1854)

Studying Japan from the Western perspective is rife with interpretive challenges, which are difficult to bridge conceptually. As Harootunian noted, the emergence of

modernization theory during the Cold War did a disservice to English language histories of Japan in five major ways. The modernization theory drew attention to Japan's accomplishments as an economically powerful nation in the 1960s (Vogel 1979). First, the linear (teleological) history became favored (Conroy 1960, Fairbank 1992). Second, modernization theorists glossed over Japanese imperialism and fascism as mere digressions to Japan's mode of progression. Third, in some instances, scholars (Shin and Robinson 1999) depicted Japanese colonialism as beneficial to countries such as Korea, Taiwan, and Manchuria. Fourth, modernization theory also wrongly assumed that Japan was an exceptional case that heralded traditional values from the 18th century into the 20th century. Casting Japan as a unique historical instance detracts scholars from scrutinizing the institutional changes that marked sociological analyses of macro-level revolutions (Goldstone 1991, Skocpol 1979). Finally, modernization theory's explanans are rife with rhetoric on Japanese nationalism. Different interpretations of Japanese history include Marxist perspectives and modernist interpretations, which aligned the Japanese with greater agency.

Narratives regarding modern Japan often begin with the arrival of Commodore Matthew Perry in 1853, after 49 years without contact with Western states. In 1853, the bakufu wished to postpone the signing of the treaty after violent attacks against foreigners ensued in Yokohama, but the United States Secretary of State, William Seward, asserted that the postponement would hurt the Japanese citizens (Auslin 2000, 85). The letters from Seward and British diplomat, Rutherford Alcock, privately admonished the Japanese for their culture of secrecy regarding diplomatic affairs (Stead 1904, Tsiang 1933, 2). Townsend Harris signed the first "unequal treaty," the Treaty of

Kanagawa, with Japan as a representative of the U.S. government on March 31, 1854.³⁸

The treaty was unequal first and foremost because the Japanese did not want to sign contracts with foreign nationals. Thereafter, the content of the treaties allowed Westerners to enter Japan without accommodating for the inverse relationship. Commodore Matthew Perry wrote the curt treaty with the permission of President Fillmore. The first article of the Treaty of Kanagawa designated the “cordial amity” between the two nations. The treaty opened the port of Shimoda in the Yedo harbor and the port of Hakodade (art. 2).

In the treaty, the United States demanded treatment different from the “restrictions and confinement as the Dutch and Chinese are at Nagasaki” (art. 5) and opened the Harbor of Yedo for future trade. The United States banned opium trade in Japan (Cassel 2012, 54). The treaty granted foreigners access to the ports of Shimoda and Hakodade, and it also established exchange standards for coins (Cortazzi 2008, 3). Article 10 of the treaty allowed American vessels to dock at any port of Japan if the vessel was distressed. The treaty also requested that an American be appointed as a consul or agent to reside in Shimoda to oversee the terms of the treaty (art. 11). Townsend Harris eventually filled the position of U.S. consul to Japan in 1856. The 1854 treaty also emphasized maintaining peace, opening ports for trade, and facilitating commerce. The treaty displeased the Japanese because the Americans demanded free trade, denied Asia’s ritual hierarchies, and denounced Japanese legal customs in favor of extraterritorial jurisdiction (Duus 1995).

³⁸ The full-text of the treaty is found at <http://www.history.navy.mil/branches/teach/pearl/kanagawa/friends5.htm>.

Treaty of Shimoda (1855)

Russia's involvement in pre-modern Asian international relations drew on centuries of past encounters. The treaty of Shimoda renegotiated past fishery rights. Russia and Japan voiced interest in north China. Establishing trade relations and discussing China led to regional ploys for power in the early 20th century that culminated into the Russo-Japanese war of 1904 and 1905.

In the Treaty of Shimoda (1855) between Russia and Japan the terms between the two nations were not symmetric. Russia had privileges to have consular representation in Japan and have Japan help if a vessel was in distress, whereas the Russians did not clarify which ports the Japanese vessels could use in the case of emergencies. The protection of property was symmetric in the treaty. In the 1st article of the Treaty of Shimoda, both sides promised to honor a lasting friendship and maintain the “personal security” of personnel from either country.

Ports were open for commerce. With article 3, the Russians gained access to 3 Japanese ports: Shimoda in the Province of Izu, Hakodate in the Province of Hokkaido, and Nagasaki in the Province of Hizen. At the ports, the Russians were allowed to trade with silver and gold coins, repair distressed vessels, and obtain necessary supplies. In article 4, the two sides shared reciprocal rights to use the ports of the other in case of emergencies involving shipping vessels. The 5th article detailed how in Shimoda and Hakodate, the Russians could exchange either merchandise or coins with the Japanese.

Territories were exchanged. The 2nd article emphasized the territorial rights of the Japanese as the possessors of the Islands of Etorofu. The Russians owned the Islands of Uruppu and Kuriles. The Sakhalin islands were under the joint control of the Russians and the Japanese. The Russians appointed counselors to be stationed at the ports in the 6th

article. Article 7 mentioned the possibility of Japanese counselors being consulted for any future affairs in question. In the 9th article, the two sides were given 10 months to ratify the treaty. Criminals were given similar conditions. Article 8 granted extraterritorial jurisdiction for those traveling in the others' country but wished mostly that the foreigners "shall never be subject to any kind of annoyance" (Harrison 1953).

In the additional articles to the treaty, the Russian travelers were allowed a radius of 7 ri (about 14 miles) outside the port area of Shimoda and 5 ri (about 10 miles) outside of Hakodate to travel in addition to article 1. Also as an addition to article 1, the Russians were allowed to visit shops, temples, and home-stays but the travelers were not allowed to enter private homes unless they were invited. And special burial sites were designated around each treaty port. In article 6, the Russian special consul was appointed in 1856 and the Japanese government could designate the areas where the Russians should reside. Article 9 of the treaty was similar to a most favored nation clause. The Russians wanted the "rights and privileges recognized for the other nations" to also extend to the Russians in accordance to the rule of "dispensing with the necessity of entering new negotiations" (Harrison 1953, 168).

Later in 1867, the Russians and the Japanese signed another agreement to reaffirm the co-possession of the Sakhalin Islands. Russians and Japanese were allowed to travel around the islands freely (art. 2). In 1874, the Russians proposed that the mixed dwellings of the Japanese and the Russians in the Sakhalin Islands be abolished. The Japanese are given permissions to stay in the islands. But by 1875, the Russians traded the Kurile Islands for sole possession of the Sakhalin Islands. In the Treaty of Exchange of Sakhalin with the Kurile Islands (1875), the 5th article granted religious freedoms to

those who wished to stay in the islands instead of returning to their country of origin. Further in the Supplementary Treaty of 1875, also known as the Treaty of St. Petersburg, the natives of both the Kuriles and the Sakhalin islands could maintain fishery rights for only three years (art. D) (Call 1992). The natives of the islands were asked to leave their domiciles. However, religious freedom was granted to Japanese, Russian, and native islanders (art. C and E).

Though interaction with the Russians existed in Asia for centuries, the Japanese like the Chinese were slow to adopt standard practices that the Europeans had in terms of philosophical and scientific beliefs because the interaction with the Westerners were limited to the elites. From the 1850's to the 1860's, the Tokugawa Bafuku attempted to westernize the Japanese military by creating infantry, cavalry, and artillery divisions (Kornicki 1998, xxiv). The military enhancements affected Japan's future standing in the international system.

Ansei Treaties (1858)

In 1858, Japan signed a series of treaties known as the Ansei treaties with four other Western nations, which were the Netherlands, Russia, Great Britain, and France.³⁹ The Ansei or unequal treaties further damaged the crumbling institution of Japanese feudalism. Japan's history of treaty relations benefited from the increasing number of historians that examined Japanese and English language documents of the time. As Auslin (2000) reported, the problem of English language accounts of Japan is that much of the research relied on diplomatic transcripts and other English only resources (Beasley 1995, Totman 2000). The "hidden transcripts" as James Scott noted (Scott 1990)

³⁹ The term Ansei refers to Japanese name for the year 1858. Though these treaties are commonly called unequal treaties, the word Ansei does not translate into unequal.

required a deeper contextual knowledge surrounding the legal interactions. The analysis of the documents interspersed with economic trends added new meaning to the legal arrangements.

The treaties of the 19th century also looked to promote peace, security for trade, methods to handle business, and protections for foreigners abroad. Though the 1858 treaty made the 1854 Treaty of Kanagawa negligible (art.12 of 1858 treaty), similar issues reemerged. The text of the U.S.-Japan treaty of Amity and Commerce in 1858 allowed for long-term residence of American citizens in the city of Yedo (art. 3). Opium was prohibited (art. 4). The practice of Christianity was allowed; however, proselytizing was restricted (art. 8). Not until the Iwakura missions of 1871-1872, where Japanese officials traveled to Western states to observe factories, schools, and other social institutions, the Meiji government lifted the ban on Christianity that existed since 1597.

Regarding extraterritoriality rights, American citizens alleged to have committed a crime against a Japanese citizen were to be tried in American Consular courts (art. 6). The Ansei treaties with Western nations protected foreigners residing in Japan against punishment under Japanese law.⁴⁰ Of the 55 Japanese treaties in the dataset, 13 of them mentioned extraterritoriality. In only 5 of the 13 cases, the Japanese included a reciprocal claim for extraterritoriality. In cases when the extraterritorial jurisdiction favored one side, Japan suffered in the treaties of Shimoda (1855), Yedo (1858), and the Treaty of

⁴⁰ Also in 1858, the British Treaty of Yedo similarly restricted the Japanese government from punishing British citizens for transgressions against a Japanese citizen (art. 7). Britain appended “Regulations under which British Trade is to be conducted in Japan” to the Treaty of Yedo (art. 20). The right of British citizens to practice whichever religion and to erect places of worship was briefly mentioned (art. 9). Japan’s earliest treaties with Western powers slightly differed from China’s in that Japan restricted certain activities within Japan. Though Treaty and Regulations conspicuously omitted the mention of opium, earlier treaties prohibited the trading of opium.

Amity and Commerce with the United States (1858).⁴¹ But in 1857, the Japan's longstanding cultural contact with the Dutch aided with the negotiation of symmetric extraterritorial protections. Richard Chang (1984) assessed Japan's British and American consular courts and found that of the 3,500 trials held and only 1% of them could be considered unequal. Thomas Stephens (1992) similarly concluded that British consular courts in Japan were far more sensitive to local customs and practices than the British were in China (Scully 2000, 14).

The Treaty of Yedo (1858), which was ratified on July 11, 1859, between Great Britain and Japan discussed diplomatic affairs, criminal procedures, social freedoms, and employment rights. The treaty allowed for both sides to establish consular representation (art. 2).⁴² Extraterritoriality extended to both sides (art. 4 and 5). British citizens were given free religious freedoms (art. 9) and allowed to employ Japanese natives (art. 8). Yokohama was opened for free trade to limit the traffic in Kanagawa, which was already a busy Japanese port city. In 1861, 126 foreigners lived in Yokohama and 31 lived in Nagasaki (Auslin 2000, 66).⁴³ Ii Naosuke attempted to curb the number of foreigners that the Japanese would have to engage. The Japanese negotiated to postpone the opening of Simoda and Hakodade until 1862 (Auslin 2000, 67).

Even with some specifications, Japan's elite class was not in agreement with the role of international treaties. The opening of Japan infuriated the samurai who after ending ties with domain homes fomented uprisings in the countryside (Allinson 1999, 11). A key negotiator of the 1858 treaty, Ii Naosuke, was assassinated in 1860. Ii had

⁴¹ The Treaty of Kanagawa (1854) did not mention extraterritoriality.

⁴² The full text of the treaty is found at <http://www.archive.org/stream/cu31924023437837/cu31924023437837djvu.txt>.

⁴³ 55 out of the 126 in Yokohama were British.

many enemies from within and outside the bakufu offices after he purged the offices of dissenting officials after the 1858 treaties. The Satsuma and Choshu domains purchased guns from Great Britain as fighting escalated. The shogun relied on an alliance with France. By 1867, the shogun chose to step down when forces against him became too strong. The Meiji Ishin (明治維新), on January 3, 1868, reinstated the Emperor of Japan.

The Meiji Ishin was almost a coup d'état. The troops of Satsuma and Choshu seized the palace of Kyoto announcing the "imperial restoration" of the emperor. Yoshinobu Minamoto who wrote, "treaties are the basis of international relations" expressed how treaties helped to equalize the power differentials of large versus small and strong versus weak states (Totman 1980, 30). Yoshinobu's sentiments differed from the Chinese diplomat, Gui Liang's statement that treaties were "rubbish." Yoshinobu emphasized the significance of treaties. In his letter of resignation, Yoshinobu, indicated that unequal treaties and contact with Western powers led to his. He wrote, "Now that foreign intercourse becomes daily more extensive, unless the government is directed from one central authority, the foundations of the state will fall to pieces" (de Bary et al. 2005, 671).⁴⁴ Losing his position as a central authority figure, he contemplated the future restructuring that Japan envisioned.

The abolition of feudalism and the centralization of the Meiji state focused on the notion of "one sovereign authority" (DeBary et al. 2005, 675)⁴⁵ or "one universal authority" (McLaren [1914] 1979, 30). The recognition of the Emperor as the sole authority figure in Japan to foreign leaders did not come quickly. The emperor,

⁴⁴ From *Horei zensho*, 1867, p.1; McLaren, *Japanese Government Documents*, pgs. 2-3

⁴⁵ From the text of the "Memorial on the Proposal to Return the Register", *Horei zensho*, 1869, p.42.

Mutshuhito, announced that the Tokugawa Shogun, Yoshinobu, would return to govern Japan's internal and external affairs. However, the new title for Yoshinobu was Tycoon and should be addressed as such in treaties (Debary et al. 2005, 671).

At the critical point of departure for the historical actors of the Meiji Ishin the Western envoys and popular revivalists wanted to integrate Japan into the Western family of nations. The bakufu, the daimyo, and the imperial loyalists, according to Wilson (1998, 39), wanted to remove the Western envoys and keep Japan insular. A strong effort to integrate Japan unfolded with the governments' decimation of the Ainu people in the Ryukyu Islands (Dudden 2005, 75, Hirano 2009). Japan's internal colonial plans became international soon thereafter.

The Charter Oath (1868) was Japan's step towards modernization. The content of the oath enunciated a departure from traditions. The fourth oath stated that "Evil customs of the past shall be broken off and everything based upon the just laws of Nature" should be observed (Debary et al. 2005, 672).⁴⁶ A system for levying taxes on "territorial lords, farmers, artisans, and merchants" was planned (Debary et al. 2005, 674).⁴⁷ Again, the language of the law affected attributes affixed to laws. The Japanese rewrote laws in 1868 with compounds of Chinese characters (*jukugo*) and adopted older Chinese terms for Western law (Cassel 2012, 35). The Constitution of 1868 set measures for restructuring the Japanese government into a centralized bureaucracy, placing new measures for airing regional grievances, and establishing national standards for levying and collecting taxes (art. 10). The cascading effect of the unequal treaties reformed domestic policies made a strong case for the transposability of schemas (Sewell 1996)

⁴⁶ From *Meiji boshin*, pgs.81-82; McLaren, *Japanese Government Documents*, p. 8

⁴⁷ From *Meiji boshin*, pgs.87-89; McLaren, *Japanese Government Documents*, pgs. 8-10

where externally promoted institutions changed domestic institutions. Similar to Sewell's notion of history emerging as a set of event (1996), Berezin strengthened the argument to assess events as providing templates of possibilities (2012).

Although some factions were directly opposed to the intrusions of international law writ large, the Satsuma leader Shimazu Hisamitsu commissioned the translation and dissemination of international law in Japanese in the mid-1860's. In general, Japan contacted representatives of multiple nations, which led to the development of Japan's high degree of cosmopolitanism. Iwakura, a member of the faction opposing the Tokugawa Shogunate, renounced the 1858 treaties. In 1869, Iwakura Tomomi tried to convince Westerners that Japan's "public laws of nations" (*bankoku koho*) were congruent with European legal structures (Duus 1989, 29). He and a small group of Tokugawa elites left for a mission in 1872 with the intent to renegotiate Japan's treaties with Western powers but insights into Western schools, factories, and living quarters drew much interest in Japan as well. Iwakura Tomomi's diplomatic mission exemplified Japan's eagerness to learn from Western nation-states

Though many participants of the mission had strong anti-foreign biases, what the Japanese diplomats observed were possibilities for social and technological improvements that could be learned from the West. Kido Takayoshi lauded the education system of the United States as one that truly "pa[id] a great deal of attention to the children" (Debary et al. 2005, 678). Kido emphasized how the Japanese are "no different from Americans or Europeans of today" (Debary et al. 2005, 678). Other letters necessitated a constitutional government that would provide "unshakable fundamental law" (Debary et al. 679). In addition, Kido expressed in awe the wealth of Europeans and

the ubiquity of clothing made out of cotton. From the Iwakura missions, Kido noticed how “Confucian biases against industrial and commercial growth” were detriments to Japan’s growth in power as a nation-state (Mayo 1972, 813). Kume Kunitake’s observations of London dealt with the wealth and industrial developments. Kume wrote, “It has taken scarcely forty years to produce such conditions” in Europe (Debary et al. 2005, 679).⁴⁸ Kume’s observations of the developments became an observable finding in the process of modernizing Japan. They accepted the “importance of law” and “extensive foreign contacts” for future survival (Mayo 1972, 813).

How Westerners regarded Japan created problems in fulfilling the terms of equality and sovereignty in its future treaties. The treaties that Japan signed with other East Asian states are described among historians as Western style treaties because of its similarities to earlier unequal treaties that Asian nations signed with European states. Acting in the economic and political interest of one’s nation is not necessarily Eastern or Western; qualifying a type of treaty as Western refers more to the formatting. Japan’s replication of Western style treaties included admonishments from Western nations. In his remarks, F.O. Adams noted,

"The great aim of the Japanese rulers is to make it appear that their country is the equal of all other nations...and nothing would flatter their vanity more than to have a great Conference in Europe, assembled, as it were, at the bidding of the Japanese...The Ambassadors, too, would naturally be elated with the idea of this European Congress, where the affairs of their country would be discussed by them in the eyes of the whole civilized world" (Auslin 2004, 188).

⁴⁸ From Kume Kunitake, *Tokumei*, vol.2, pp. 58-59.

Keeping in mind the three forms of treaty interpretation – 1) textualist (reading the text on its own), 2) intentionalist (approximating the intent of the authors), and 3) teleological (the treaty's goals), British-Japanese treaties demonstrated differences in how the documents were perceived. If treaties between Great Britain and Japan were read with a textual interpretation mode, Adams's statement would contradict the legal documents. The intentionalist reading would suggest that Britain's interest was in trade and not in the civilizing mission.⁴⁹ Also the teleological reading would suggest that in terms of commerce, Japan industrialized though other social practices such as Christianity was never popular, especially when compared to cases such as Korea (Kane and Park 2009).

Legal Entries to Korea

Intellectual partnerships with Western states were favored. In the 1870's and 1880's, Gustave Boissonade, the Meiji government's French legal advisor gave lectures and taught students civil and criminal codes. The Justice Minister, Eto Shinpei, sent students to Paris in 1873 to learn the Napoleonic Codes of 1810 deeply (Dudden 2005, 105). In 1872, Mori Arinori, an educator, wanted Yale professor William Whitney to help invent a language for the Japanese. Mori compared the Japanese language to a form of "deranged Chinese" and wanted a new language that suited the "modern nation" (Dudden 1999, 165). Also in 1873, the debate loomed around Japan's possible invasion of Korea. The councilors assumed that the Japanese needed to handle the Korean "children" as they had the Russian "bullies" (1972, 813). Though the connotation of Russian aggression came after Russians had murdered Japanese nationals in the Sakhalin Islands, the Russians were not denoted as immature or juvenile in comparison to other

⁴⁹ The intention of the treaty appears to focus on commerce rather social and cultural exchanges.

citizens. Koreans were described as children who had to be guided through the process of international negotiations and because they were unable to understand the break free from tributary ties to China. As children may not always know what is best for them, both the Chinese and the Japanese were pulling the Koreans towards them for allegiance.⁵⁰

In 1894, Prince Matsukata Masayoshi extolled the development of 4 goals in Korea. First, Korea should open 3 additional ports and establish foreign residential zones. Second, Japan should secure the rights to mine coal in Korea. Third, Matsukata proposed monopolizing the telegraph lines. Fourth, the prince wished to secure rights to build a railroad from Seoul to Pusan (Duus 1984, 138). Even though the Japanese government did not promote all these terms, Japan's infiltration into Korea emphasized commercial goals. Japan's concrete goals for Korea included 1) constructing a railroad line from Seoul to Pusan, 2) building a railroad line from Seoul to Uiju for military use, and 3) securing the rights to build transit lines from Kyongsan and Gensan to Unggi Bay (Duus 1984, 140). The Japanese proposed for 4) "indirect or direct control over the Masan-Samlangjin line" (Duus 1984, 140) and 5) direct control over the post, telegraph, telephones, and for these to merge with the Japanese system (Duus 1984, 141). Developing infrastructure signified Japanese plans to send their excess population to the colonies.

Treaty of Shimonoseki (1895)

The Japanese were interested in material gain, but they focused on gaining territorial possessions across Asia. Japan's military strength developed the mental and

⁵⁰ Characterizing an ethnicity as childlike occurred regularly in the early 20th century when Gabriel Tarde (1903), a sociologist, identified native Filipinos as children imitating adults (Go 2012).

physical readiness of the soldier.⁵¹ With resolve, the Japanese defeated the Chinese in the Sino-Japanese war of 1894 through 1895. The Treaty of Shimonoseki (1895) concluded after Japan's victory in the Sino-Japanese war granted Japan access to colonize small nations in the Pacific. However, the first article of the treaty noted the "full and complete independence and autonomy of Korea" which was Japan's effort to end legally Korea's longstanding tributary relationship to China.⁵² After Japan opened Korea for Western style treaties, China wrote an unequal treaty with Korea in 1882 that denigrated Korea into a low level tributary state.

Japan gained territories as the victor. The war's end furthered economic growth in Japan. The Japanese gained control of the southern portion of the Feng-tien and the eastern portion of the Liao-tung" (MC 1917, 591, art. 2). The island of Formosa (current day Taiwan) and the Pescadores Group were also ceded. The inhabitants of the ceded territories were allowed to stay for 2 years and if they have not left after the 2 years then the residents will be deemed Japanese citizens (art. 5). Both sides created a joint commission to investigate delimitations (art. 3).

With increased territories Japan's access to multiple ports augmented. To trade with China fluidly, Japan gained the most favored nation status (art. 6). China opened Shashih, in the province of Hupeh, Chungking, in the province of Szechwan, Suchow, in the province of Kiangsu, and Hangchow, in the province of Chekiang to the Japanese (art. 6). Japanese merchants were allowed to travel onto the Upper Yangtze and to the

⁵¹ Japan's military ascendancy came from top-down measures to build a stronger military. To do so, the military worked at the individual level to strengthen the soldiers (M. Anderson 2009). Handbooks on such as Mori's *A Handbook on Military Gymnastics* (Heishiki taiso ni kansuru kengen en) appeared in 1887 (M. Anderson 2009, 56).

⁵² The full-text of the treaty with 11 articles is found on <http://www.taiwanbasic.com/treaties/Shimonoseki.htm>.

Woosung Rivers and were able to trade within China's interiors. Additionally, the 1896 Treaty of Commerce and Navigation between China and Japan emphasized Japan's extensively trade with the Chinese. The 25th article of the 1896 further confirms Japan's desires to maintain most favored nation status.

In the peace treaty, the stop of military action (art. 10) was crucial for the Chinese and the Japanese desired indemnities from the war. China agreed to pay war indemnities of 200,000,000 Kuping taels, a form of silver currency, in 8 installments (art. 4). Following the release of all prisoners of war (art. 9) and the payment of two installments of war indemnities to Japan, the Japanese would withdraw troops from China (art. 7 and art. 8).

The Japanese operated as many firms as the British in China around 1899. By 1914, direct trade with Japan was the core of China's economy. Direct trade China amounted to 113.3 million taels for Great Britain and 184.9 million for Japan (Duus 1989, 3). 590 British firms and 1269 Japanese firms were in China in 1914. In terms of investments in China, Japan spent \$1 million U.S. dollars while Great Britain spent \$260.3 million U.S. dollars in 1899. By 1914, the amount rose to \$219.6 million U.S. dollars for the Japanese and \$607.5 million U.S. dollars for the British in China. By 1931, the Japanese dominated economic activity in China. The amount of direct trade with China rose to 543.7 million taels for the Japanese and 170.9 million taels for the British. Also the number of Japanese citizens residing in China increased from 2,440 in 1899 to 80,219 in 1914 to 255,686 in 1931. The British population in China grew at a slower rate from 5,562 in 1899 to 8,966 in 1914 to 13,015 in 1931. British investments in China were concentrated in areas south of the Great Wall. Much interest in northern

China expanded Japan's commercial growth in Asia. Japan's interest in China grew while Britain's economic activities were also strong in China.

By 1898, Japan was able to renegotiate the unequal treaties of decades before. The Treaty of Commerce and Navigation between the United Kingdom of Great Britain and Ireland (1894), also known as the Aoki-Kimberley Treaty, removed extraterritorial rights of British citizens in Japan. In Japan, Western nationals' exercise of extraterritoriality ended in 1899. Since 1875, the Western consular courts adjudicated 65 mixed court cases mostly involving the British (33 cases) and the Americans (19) (Chang 1984, 18). According to the *Japan Weekly Mail*, other trials involved German (5), Portuguese (4), French (2), Swedish-Norwegian (1), and Dutch (1) citizens (Chang 1984, 18).

During the early 20th century, Japan benefited from treaties to develop territorial and economical advantages in Asia (Adams 1974, 5). Japanese officials used treaties for material gains, particularly after the Anglo-Japanese Treaty of Alliance (1902). According to Adams, the Japanese viewed the international systems as a hierarchy of unequal states where Western powers were at the apex. By expanding territorially in East Asia, Japan maneuvered to become a member of the family of nations. However, Adams argued that Japan retracted from attempts of replicating Westerners and later bolstered itself as modernizer of East Asia (1974, 6). World polity model scholars would view Japanese success in the 19th century as the result of successfully imitating Western nations (Meyer et al. 1997, 164).

After the Sino-Japanese War, the Russians grew concerned about their position in Asia. In a secret memorandum on December 15, 1897, Prince A. Volkonskii, a general

chief officer expressed concerns for “the strategic significance of Korea” and how the Russian navy should have a stronger presence (Lukin 2006, 27). Meanwhile, with the secret Taft-Katsura agreement between the U.S. and Japan in 1905, Japan expanded colonial interests towards Korea.⁵³

Treaty of Portsmouth (1905)

The 1905 Treaty of Portsmouth recognized Japan’s emerging status as a major world power. The Russo-Japanese War signified two nations following the rules of international law in war (Howland 2011). Controversy arose as to whether the Japanese acted in accordance to international law when declaring the start of the Russo-Japanese war (Howland 2011, 71). The war refined Japan’s understanding of sovereignty and rules of engagement. Internally, Russia had been growing weak due to class warfare and increasing factionalism among the elites. But other European states were less aware of Japan’s rapid adoption of Western military techniques. The war was fought over territorial possessions in Korea and the Manchuria region in China. In the 2nd article of the treaty of Portsmouth, Russia granted Japan “paramount political, military and economical interests” in Korea.⁵⁴ The two sides agreed to exit Manchuria and Russia renounced any territorial claims to Manchuria (art. 3).

The Japanese gained the rights to operate the “railway between Chang-chunfu and Kuanchangtsu and Port Arthur” and the coalmines nearby (art. 6). Both sides hope to maintain the property rights of the inhabitants (art. 10) and allow fishery rights for the Japanese near Okhotsk and Bering Seas (art. 11). Once the prisoners of war are returned

⁵³ The Taft-Katsura agreement (1905) secretly acknowledged the United States’ colonial ambitions in the Philippines and Japan’s interest in Korea. With the Lansing-Ishii Agreement (1917) between the United States and Japan, the Japanese colonized Manchuria (Dudden 2005, 142) while the United States’ access to Asia remained open.

⁵⁴ The full text is found on http://www.lib.byu.edu/index.php/Treaty_of_Portsmouth and the treaty was signed on September 5, 1905.

(art. 13), the Russians would assess the cost owed to the Japanese for the care and maintenance of the prisoners. The sub-article to article 3 promised the simultaneous withdrawal of troops from Manchuria. And two parties would appoint a joint commission to discuss the delimitation and boundaries found in the treaty (sub-article to art. 9). The joint commission on delimitation was also mentioned in the Treaty of Shimonoseki (1895). Japan gained territorial gains and industries to control.

Japan's Growth in the late 19th century

Japan's precarious position at the world political stage shifted through trade relations. Acceptance into the civilized standard of nations came after Japan's military and economic successes occurred (Gong 1984). Historian Hilary Conroy in the 1950's discredited economic motives for Japanese colonialism (Duus 1984, 129). State capital aided the development of Japan's empire (Duus 1984, 130). In the 1980's, Peattie, Duus, and others explored the economic dimensions of the Japanese empire. The legal ramifications of Japan's unequal treaties of the 1850's promulgated a "competition through commercial and industrial activity" with interest in expanding export markets (Komura Jutaro [1902] in Duus 1984, 133).

Treaties are applied as scripts according to the World Society model that transferred from more powerful to less powerful nations. Japan's adoption of the laws existed not as an imitation a la neo-institutionalism (DiMaggio and Powell 1983) because postcolonial theories of hybridity "enunciated" (Bhabha 1994) the laws into Japanese. The Japanese officials used their knowledge of treaties to renegotiate reciprocal terms from Western nations in the late 19th century (Auslin 2004). Treaties of 1894 accorded the Japanese with trading conditions, but Western officials did not consider the Japanese government as equals (Auslin 2004). The Japanese engaged European and South

American states through international law even though the Japanese considered the international system as a Janus-faced model that voiced equality while not granting equal relations to Asian nations.

Within Asia, on the other hand, Japan gained economic and technological prowess. From 1883 to 1913, 20% of Japan's net national product was in agriculture (Harootunian 2000, 4). Japanese manufacturers flourished in China. Taiwan and Korea developed into agricultural outposts for Japan. International laws were instrumental to Japanese outward expansion to gain territories and inward modifications to "modernize" its subjects. The codes for children's education, dress codes (Shively 1965), production of popular culture, regulations on gambling and so forth added to the Japanese cultivating a positive image for the Western nationals. The French, with the leadership of Gustave Boissonade (1825-1910), redesigned Japan's legal lexicon. Official government titles of the Meiji period (1868-1912) employed European nomenclature of Baron, Viscount, Minister, and Count. The Meiji government restored a defunct dynasty while adopting many Western customs such as language, vocabulary, dress, and military organization. Exhuming the past to model itself closer to "modern" and "Western" state allowed the Japanese government to craft precisely a national ideology.

Western Reactions to Japanese Colonialism

Western observers received Japan's adoption of wearing Western suits, ridding traditional social classes, and restructuring legal systems favorably. Publications such as *Journal of Race Development* operated until 1919 and promoted measures to "improve" non-Caucasian societies. Some authors noted how "Western" imitation was a necessary step towards "progress" (Ladd 1918, Wilson 1912). Though officials of Great Britain

observed Japan's call for equality with the Europeans as sheer vanity, the Japanese continually succeeded commercially and militarily.

Japan's relationship with the United States was highly cooperative. Applauding Japan's revised treaties, President McKinley discussed "Japan's position as a fully independent sovereign power" equipped with "Comprehensive codes of civil and criminal procedures" (Wilson 1912, 254). Wilson who excerpted the McKinley's announcement in an article entitled "The Family of Nations Idea and Japan," shared a popular academic conception of the era that modernizing even through colonialism was a principled act.

As Western nations openly applauded Japan's prominence in the international community, Japanese scholars adopted the voice of the European intellectuals. World Society scholars theorized that Western ideology would permeate to the peripheries. The implementation of international law and justifications for colonialism intrigued Japanese scholars of the early 20th century. Nitobe Inazo (1912) discussed the role of "Japan as a Colonizer." Nitobe described tales of "savages living in a primitive life" from Tainan and Taihoku disrupted the peace of Chinese settlers in Taiwan (Nitobe 1912, 349). The brigands sacked the villages and demanded tributes. In addition to accounts of paupers lining the streets in Moukden, Nitobe recounted chilling tales of head-hunters who were "very partial to Chinese heads" (Nitobe 1912, 350) frequently terrorizing villagers.

Table 19 - Japan's objectives for Colonization by Nitobe (1912, Dudden 2005, 359-360)

1	To defend the territory as it was gained as a spoil of war
2	To protect property and life and disseminate legal institutions
3	To protect and improve the health of the colonized
4	To encourage the growth of industries in the colonies
5	To educate the colonized

Nitobe taught his students at the University of Tokyo in the 1910's that "Colonization is the spread of civilization" (植民地は文明の伝播) (Dudden 2005, 134) and could also be seen as a means "to plant people" (*shokumin*, 植民) and "to increase people" (*jouyoumin*, 殖民) (Dudden 2005, 137).⁵⁵ With the economic impetus added to the fabricated moral rationale for colonialism, Korea, Taiwan, and other polities were colonized. The Japanese unofficially ruled Manchuko while formulating policies towards Pan-Asianism in the 1930's (Saaler and Koschmann 2007). Through legal treatises, other nations of the international system officially condoned the actions.

Japanese scholars affinity to German cosmopolitanism encouraged a form of internationalism that yielded a campaign towards Pan-Asianism. Pan-Asianism relished on Japan's mythical past of divine imperial dynasties. Japanese scholars legitimized Japanese governments in other parts of Asia not as an imperialism in the Western sense but an effort to "make the world one household" according to the logic of co-prosperity (Matsuzawa 1939, Saaler and Szpilman 2011, 11). The *koa* policy for Raising Asia retooled educational and commercial activities in Japan to restore wealth in Asia (Schneider 2011, 72).

Conclusion

The treaties of the 19th century significantly changed the ways in which Asia perceived itself with respect to the rest of the world. Even through the early part of the 19th century, China viewed itself as a centrally located, culturally refined, and morally superior nation in comparison to the British, American or Japanese states. China's self-assessment did little to help preserve its national welfare as the lure of commercial riches

⁵⁵ To plant people can be Romanized "shokumin" and the to increase people, the Romanization is "jouyoumin" which is in modern Japanese, the combination of these two Kanji characters are less common.

lessened the stigma of working as a merchant.⁵⁶ Falling behind the new ideology of the era, the Qing dynasty of China failed to adapt to a new form of global supremacy that emphasized commerce. China, slowly, undid the damages of the unequal treaties. The 1865 treaty with Belgium where Belgium was allowed to trade opium into China was unilaterally terminated in 1928 (http://www.worldcourts.com/pcij/eng/decisions/1928.02.21_belgium_china.htm). China adopted a new legal code to accommodate Western legal traditions in 1928. And it was not until 1943, when China was able to have Western states relinquish extraterritoriality within China (Peters 2007). Even though China and Russia had longstanding treaty relations, Russia concluded an unequal treaty with China' which took away China's rights to outer Mongolia in 1945.

Unlike China, Japan succeeded in creating an industrial infrastructure, advancing militarily, and gaining territorial possessions but the transition was tumultuous. The leaders of the old samurai order strongly resisted a move towards Westernization. Even though Japanese officials adopted Western dress and employed written legal treaties heavily, Japan distinguished themselves from other nations that met the standard of "civilization." The old hereditary monarchy was reinstated all the while a more liberal and democratic charter oath became national law. Japanese scholars and officials rebranded Japanese nationalism as a form of pan-Asianism that hoped to combat Western colonization of Asia. Japan, in turn, became a colonizing power in Asia and shortly before World War II controlled 27 possessions. The imperial mentality developed precipitously in the 19th century.

The early exposure to the Dutch scientists in the 17th century allowed the Japanese to extract knowledge from Westerners. The Japanese did not passively accept Western

⁵⁶ Confucian society did not consider trade as noble work.

laws in the 19th century. Japanese “passivism” in international law was attributed to Japan’s acceptance of legal methodologies after World War II (Koh 1997, 2626 fn130). Further, the contact with the Russian “barbarians” in the early 19th century, French legal scholars in the 1870s and 1880s, German physicians of the late 19th century (H.E. Kim 2006), and so forth contributed towards Japan’s development as a modern nation-state.

CHAPTER 5

VARIETIES OF IMPERIALISMS IN KOREA

In this chapter, I will analyze the key treaties that Korea signed which transformed Korea from a relatively unknown polity to a recognized sovereignty and to an annexed territory. Korea transitioned from a dependency upon Chinese suzerainty to Japanese imperialism. The reluctance for Korea to divorce itself from the Chinese empire paled in comparison to Korea's resistance to Japanese rule. By the 20th century, the Koreans were indebted to Japan for industrial infrastructures.

Table 20 - Treaty centered timeline of Korea

2/26/1876	Treaty of Ganghwa	(with Japan)
5/19/1882	Treaty of Amity and Commerce (Treaty of Jenchuan)	(with the United States)
7/23/1882	Imo Mutiny	(within Korea)
8/30/1882	Additional Convention of Jenchuan	(with Japan)
9/1/1882	Regulations for Maritime Commerce and Overland Trade	(with China)
1/1/1883	Twenty four rules for the traffic on the Frontier between Liao-tung and Korea	(with China)
11/26/1883	Treaty of Friendship and Commerce	(with Great Britain)
11/26/1883	Treaty of Seoul	(with Germany)
6/26/1884	Treaty of Friendship and Commerce	(with Italy)
10/3/1884	Agreement respecting a general foreign settlement at Jenchuan	General announcement
7/7/1884	Treaty of Seoul	(with Russia)
1/9/1885	Treaty of Hanseong	(with Japan)
6/4/1886	Treaty of Friendship, Commerce and Navigation	(with France)
11/12/1889	Korean and Japanese Fishery regulations	(with Japan)
6/23/1892	Treaty of Friendship, Commerce, and Navigation	(with Austria-Hungary)
9/11/1899	Commercial Treaty	(with China)
3/23/1901	Treaty of Friendship, Commerce, and Navigation	(with Belgium)
4/17/1901	Postal Agreement	(with France)
7/15/1902	Treaty of Friendship, Commerce and Navigation	(with Denmark)
11/17/1905	Protectorate Treaty	(with Japan)
7/24/1907	Protectorate Treaty for Internal Administration	(with Japan)
1/1/1909	Memorandum concerning administration of Justice and prisons in Korea	(with Japan)
10/1/1909	Memorandum concerning establishment of Bank of Korea	(with Japan)
8/29/1910	Annexation Treaty	(with Japan)

The analysis on Korea in the 19th century took either a civilizational or national approach (Hahm 2006, 36). The civilizational approach examined how Asia as a civilization conflicted with Western norms. The national approach in Korean studies discussed mostly internal developments. The development of Korea's national ethnic identity, *minjok*, took form due to the struggles that Koreans endured mainly after being colonized. The expedition that the American vessel, General Sherman, did of the Korean coast in 1866 was a disappointment for the Americans. The treaties opened ports primarily to establish trade. Prior to the Ganghwa treaty, Koreans and Japanese traded via the Japanese House, *waegwan*, in Tsushima (Larsen 2006, 54). The prospects of economic development in Korea seemed weak but the Japanese proceeded to enter into treaty relations with the Koreans.

Historical assessment of 19th century Korea

The legacies of imperialism in Korea had three distinct pasts – Chinese Confucianism, Japanese industrial colonialism, and American Protestantism. Korea related to the Qing court via *sadae* (serving the great or big country). Korea's relations to Japan were further based on *kyorin* (neighboring states) (W. Kang 2005). An examination of Korea in the 19th century will utilize theories of state-formation and the diffusion of international law. To understand contemporary Korean society, one must become aware of its history. At the most basic level, physical structures built in the 19th century still exist. Institutions remain pertinent in Korean society. Today, the prestige of foreigner-established institutions demonstrates how the legacies of imperialism resonate with contemporary Koreans. For instance, Lee (2010) in *한국의 고등교육* (*Korea's Higher Education*) explored the roles of Buddhism, Confucianism, and Protestantism in

educational institutions. But in the 19th century the three powers that actively vied for power in Korea were Japanese, Chinese, and American governments.

Historians of early modern Korea evaluated multiple standpoints. Martina Deuchler's classic study of Western powers in Korea in *Confucian Gentlemen and Barbarian Envoys* (1977) highlighted Korea's struggles to accept the "norm" of bilateral treaties and interactions with foreigners from the afar. Kirk Larsen's 2008 account, *Tradition, Treaties, and Trade: Qing Imperialism and Chosŏn Korea 1850-1910*, assessed how China kept Korea in an inferior position. China resisted relinquishing power and Korea was reluctant to abandon the relationship as well (Inoguchi 2006). The Qing dynasty's treaty relations with Korea helped the Chinese retain tributary state relations with the Koreans.

In *Japan's Colonization of Korea* (2005), Alexis Dudden studied the formulation of international terms into Japanese. The new legal terminologies helped to create a discourse and a mindset for colonization. Language formed the logic that allowed legally legitimate change in power to take place in Korea. The key to Japan's colonization was to ease into the process through legal procedures such as not allowing the Koreans to contact foreign nations without Japanese officials acting as mediators, taking away extraterritorial rights for Koreans, and mandating protectorate and annexation treaties in the early 20th century. Familial terms were used to describe Japan's relationship to Korea. China considered Korea "younger brother" throughout the 19th century. Japan referred to Korea as "cousins" or "half-siblings" (Dudden 2005, 120).⁵⁷

⁵⁷ Korea had been treated diplomatically as a stepchild. The language of paternalism is not specific to colonialism in Asia. German governors used explicitly paternalistic terms to address the Samoans as children (Steinmetz 2003, 58).

Confucianism was the main but not the sole philosophy in premodern Asia. Even western influences via the Dutch had been in place for centuries. Retaining the Confucian ethic of *saimin* (“saving the people”), according to Tetsuo Najita, kept Dutch studies somewhat compatible to the official Confucian thought of maintaining order during the Tokugawa period (Dudden 2005, 39). Dudden provided an intellectual historian’s account of how new legal terms blended into the Japanese language. The new vocabulary for law allowed for the Japanese empire to create “a common sense” that developed a process for colonial conquest (Dudden 2005, 5). The new vocabulary for international relations concurred with attempts to reorder the hierarchies of power in Asia (Dudden 1999, 165). The term, “sovereignty,” Dudden argued, gave “new awareness that claiming land in international politics was a legally defined privilege” (Dudden 2005, 41). Throughout the book, Dudden reiterated how “independence” and “autonomy” were interchangeable terms. The language of law allowed ideas to lead into actions such as military intervention. In classical Chinese, “sovereignty” (*zizhǔ*, 自主) and “independence” (*dùlì*, 獨立) were related terms. In the new legal vocabulary for the Japanese, independent country (*jishu*) closely expressed “self-rule” and “sovereignty” (*ken wo hoyu*) (Dudden 2005, 54).

Historical Background of Korea

Confucianism came to Korea in the 4th century. The adoption of a new ideology was a common tactic for newly initiated regimes. The first Confucian academy opened in A.D. 372 in Korea but the shamanistic indigenous relations and Buddhism were equally proscribed throughout the society. Korea was not deeply embedded in the traditions of Confucianism until 1392 when the new Yi dynasty wanted to break from the

old dynast of the Koryo period. During the Choson dynasty (1392-1910), factionalism plagued the Korean bureaucracy. Different interpretations of Confucian texts led to schisms. The ideological rifts fomented constantly (Deuchler 1992, Palais 1996).

By using morality as the ideological mechanism, Confucianism functionally created discipline. Throughout the 19th and 20th centuries, the Koreans especially in rural areas adhered to shamanism and nativist beliefs in practice. Though efforts of the Yi dynasty was to instill the moral teachings of Confucianism with picture books for the mostly illiterate populous that illustrated the five relations and respectful behaviors, the Confucian ideology was sincerest solely among the educated, bureaucrats, and the government functionaries. The official state policy of Korea espoused neo-Confucianism. Therefore laws were in place to ban widows from remarrying, daughters or children born from concubines from inheriting property, and having unmarried daughters listed in the family registries. Diplomatically, the Korean government promoted the notion of *sadae*, which meant to “serve the great.”

The legal system that emerged out of Confucianism privileged central bureaucracies and autocratic rule. The legal norms of the Confucian state did not have a mystical quality (Shaw 1981). The legal system in Korea partly relied on Chinese law from the Tang and Sung periods including the late 14th century Yuan codes (Shaw 1981, 3). But the developments occurred within Korea throughout the 18th century. Principally, the Koreans accepted law that the Ming officers in China practiced. The Chinese had power and authority ultimately that was “derived from the central government” (Shaw 1981, 4).

Korea's earliest contact with Westerners occurred in the 15th century when shipwrecked Dutch sailors including Hendrik Hamel took refuge in Korea (Ledyard 1971). The incident bore little longstanding significance in Korea. Japan's agreements with Korea including the Kiyu Agreement of 1609 (Lewis 2003, Mayo 1972) had not benefited the Koreans much. The trend continued throughout the 19th century. Even though the Korean government imposed strict isolationist policies to thwart clandestine and potentially subversive activities such as Christianity the Koreans sought out Christian doctrines. Unlike other Asian states where European missionaries entered to proselytize, in 1785, the Koreans requested a priest living in Beijing, Gutzlaff, to teach in Korea (Kane and Park 2009).

Early Western Encounters

Korea had brief encounters with Westerners in the middle of the 19th century. In 1855, a ship containing American, British, and Filipino men was stranded off the coast of Tongchon and another was stranded off the coast of Yonil in 1865. France made two attempts to enter Korea in 1866 with Catholic missionaries, but the Koreans thwarted their efforts both times. Korea's first official contact with a Western vessel involved the American vessel, *Surprise*, in 1866. S. Wells Williams, the American chargé d'affaires in Peking, notified Secretary of State William Seward of the encounter with Koreans (W. Kang 2005, 6). When the ship, *General Sherman*, entered Korea's Daedong River in 1866, a skirmish broke out, but diplomatic exchanges between Korean, American, and Chinese governments kept the incident from escalating further.

In Pak Chehyong's account of the French naval vessel approaching Korea in 1866, voiced the fears and anxiety of how "our country will be in danger" (Pak 1997, 223). The officials in part felt they had failed in their duties to protect the King. The

Koreans ambushed the French, killing dozens. The French soon retreated. In 1867, the American trading vessel, *General Sherman*, approached the coast of P'yongan. Oppert, a German, arrived in P'almi Island in 1868 and Han Songgun of the Munsusan Fortress killed 3 Germans. The efforts to expunge Westerners and their influences gave rise to widespread policing. Undercover agents were sent to villages to capture Korean Catholics and the converts were beheaded after capture (Pak 1997, 226). The Great Persecution of 1866 basically extinguished the Christian population of Korea.

Western officials conceptualized Korea as a sovereign nation-state. The Koreans did not allowed vessels such as *General Sherman* to sail into Korea in the first place, but the killing of an American entangled the Korean government into an international scandal. Prince Kung of China corresponded with Williams regarding Korea. However, Prince Kung noted that “Although Korea [wa]s regarded as a subject state of China, she [wa]s completely sovereign” in terms of internal sovereignty (W. Kang 2005, 13).⁵⁸ The Korean government handled domestic affairs without Chinese influence, and its tributary relations to China were largely customary at that point. Korean intellectuals were eager to supplement the philosophy of Confucianism with metaphysical understanding of the world. Scholars sought out Christianity to expand the logic to universality.

Early Christian Activity in Korea

Factionalism marginalized elites who later devoted their lives to intellectual investigations of Christianity. Catholicism grew out of elitist debates on Neo-Confucianism in 1784. Catholicism became a real threat to national security in 1801 when Hwang Sa-yong carried a secret message to the bishop in Beijing within the lining

⁵⁸ From *Ching-tai Chou-pan I-wu shihmo, Tung-chi-chao* (*The Complete Account of the Management of the Barbarian Affairs of Ching Dynasty, Tung-chi Period*). Peiping: Old Palace Museum, 1930, Vol. 57, 7th year of the Tungchi, 2nd moon and 18th day (March 10, 1868)

of his jacket. The so-called “silk letter” listed the grievances of the clandestine Catholic community in Korea and asked for foreign troops to attack the Korean government so that Catholics could practice their religion freely.

The letter detailed the short but bloody history of the church in Korea and discussed the weakness of the Korean military. The letter revealed to the Western nations that “The king was still a child and cannot lead [the army] into combat” (Hwang 1801, 135). Additionally, the Catholics requested that the Pope “dispatch a fleet of several hundred ships, filled with fifty or sixty thousand of the best troops, along with lots of cannons and other deadly weapons” (Hwang 1801, 135). After the Catholic persecutions of 1801, other systematic persecutions followed in 1839 and 1866. The civil unrest in Korea existed well before Western-style treaties. The treaties added to the declining control of the Korean government.

In 1884, predominantly Methodists and Presbyterians missionaries from the United States flooded Korea. In 1885, Dr. Horace Scranton started the Methodist Episcopal Mission to train Korean medical personnel. With the arrival of female doctors from Western states, education extended to female students.⁵⁹ In 1888, Mary Scranton founded what is known today as Ewha Women’s University, which remains one of world’s leading female university. Western settlers who entered Korea in the late 19th century made long-lasting impact through the establishment of universities and medical facilities. Educational improvements extended to serve the multiple strata of Korean society.

⁵⁹ Historically, healers in Korea had been women, but the prestige of the medical profession grew with improved medical training.

The missionaries helped to distance a few Koreans from strict adherence to Confucian rituals. Deuchler's assessment of Korea's transformations of the late 19th century implies that the West's role was minor in comparison to the Japanese and Chinese interests in the peninsula. While Protestant missions flourished in Seoul and Pyongyang in comparison to their lackluster success in Nagasaki and Beijing, the Tonghak movement, which lost momentum after the death of its originator in 1864 resurfaced in 1894.

Early Nativism in Korea: Tonghak Rebellion

Korea's rigid social hierarchy was an underlying factor that contributed to the domestic unrest of the 19th century. Korean peasants, farmers, and outcasts, unable to escape the classes they were born into, organized rebellions. In the 1860's, the Tonghak movement, which was started in the Southern province, disrupted existing Korean social hierarchies and practices.⁶⁰ Ch'oe Che-u (1824-1864), who failed his bureaucratic entrance exams, started the Tonghak movement.⁶¹ The movement synthesized of Taoism, Buddhism, Confucianism, and mysticism. Tonghak leaders promoted peasants' rights. Slavery and ascriptive social hierarchies continued until the passage of the Gabo Reforms (1894) in Korea.

Tonghak leaders organized protests, riots, and staged masked dance performances that encouraged violent uprising against wealthy aristocrats (*yangban*). The syncretic and mystical religion of Tonghak ("Eastern Learning") revolved around the charismatic leadership of Ch'oe. Politically, he endorsed improved conditions for the commoners

⁶⁰ The capital city, Seoul, and other major cities of cultural importance such as Kaesong and Pyongyang were located in the Northern part of the Korean peninsula. Southern provinces were stereotyped to be rural philistines.

⁶¹ Tonghak literally translates to Eastern learning. "Tong" means east and "hak" means learning.

based on pseudo-religious rationale. He discussed that all people belong to God and should be treated equally. Tonghak leader Chon Pong-jun claimed, “Man is the most precious being in the world because he has morality” (Hahm 2006, 38). Chon continued that the relationship between father and son is “the fundamental fabric of human morality” (Hahm 2006, 38). Personally, he promoted the myth that he had magical powers similar to the shamans. Ch’oe supposedly drank water mixed in with ashes of burned talisman and used the potion as a method to heal illnesses (Duncan 1997, 229). The movements’ audience was the illiterate and poorly educated commoners. He wrote poems and political tracts in phonetic Korean instead of Chinese. As Elias argued in *The Civilizing Process* ([1939] 2000), using the vernacular was a deliberate attack on elite structures.

After Ch’oe Cheu was executed, Ch’oe Sihyong (1827-1898) transitioned to become the leader. Ch’oe Sihyong believed in social equality and tapered the activities of the Tonghak movement after violent revolts of the 1860’s. The Korean government executed key Tonghak leaders in 1864 and decimated the Catholics in 1866. The elites perpetrated more violence after capturing the followers of the nativist Tonghak and foreign Christian philosophies that threatened the status quo. Korea’s rigid social structures prevented any activities that potentially threatened the dynasty. The de facto regent of Korea from 1864 to 1873 was Daewongun, the father of the twelve year-old King Gojong. Daewongun imposed an isolationist policy and grew increasingly wary of Western powers after the Opium (1839-1842) and Arrow (1856-1858) wars ravaged China.

The peasants of the Tonghak army wanted to rid Korea of Western influence and wished to reinstate Daewongun to lead the government. The army defeated Korean troops in their campaign to the capital. The government negotiated a cease-fire with the army, while the Sino-Japanese war was undergoing. By 1894, Japan controlled nearly every internal security matter in Korea. The jingoistic Tonghak army attempted to fight the Japanese in Konju but was defeated.

Geopolitical context of Asia

China's influence over Korea in foreign diplomacy allowed some to speculate that China wanted Korea to sign treaties with the U.S. to curb Japan's growing power in the region (Dudden 2005). However, Koreans were unable to stop Japan's increasing control. Japan represented a departure from the tributary state system that China and some factions of Korean elites wished to maintain. Japan's plans, after the Meiji Ishin of 1868, represented a push towards the international system where Korea stood apart from China as a sovereign nation, but scholars suspected Japan's imperialist motivations including its foreign policies (Suzuki 2009).

The Meiji Council of State met in October 1873 to decide whether military action should be taken in Korea (*seikan ron*). In 1873, when the Meiji Diet decided to invade Korea, part of the rationale to do so was to manage Korea's childish behavior. Councilors compared the Korean problem to the Sakhalin issues of the 1850s and 1860s. Officials such as Okuma took the stance that Koreans were children behaving badly while the Russians were treated as naturally aggressive and belligerent.⁶² Marlene Mayo reported,

⁶² Go (2004, 47) also noted how the Americans considered the Filipinos to be child-like.

“Okuma had said a few months earlier, the Koreans were behaving more like children than responsible adults. Did one slap around children but not take on bullies like the Russians?” (Mayo 1972, 813).

The Chinese appraised Korea differently. Huang Zunxian in 1880 prepared a policy for Korea that wanted to use Korea as an ally to keep Russia at bay (Deuchler 1977, 88). Deuchler wrote, “China and Korea really formed one and the same family” (ibid). The foreign policy initiative of *sadae* simply meant that Korea would serve the greater interests of China. In the 19th century, Korea signed multiple treaties with China, Japan, and Western nations. In my analysis, I included 24 treaties with Asian and European partners.

Table 21. Distribution of Korean Treaties by Region-based Dyad

Region-based dyad	Count
1) Great Powers and Asian states	10
3) Intra Asia	14

Table 22. Distribution of Korean Treaties by Binned Decades

Binned Decades	Count
5) 1861 to 1880	2
6) 1881 to 1900	14
7) 1901 to 1912	8

Table 23. Distribution of Korean Treaties by Type

Types of Treaties	Count
2) Commerce and navigation	5
3) Friendship	10
6) Delimitation and protectorate	6
7) Consular conventions and other	3

Treaty of Ganghwa (1876)

The Treaty of Ganghwa opened Korea to economic trading as the Treaty of Yedo (1858) had done for the Japanese. Japan broke the tributary bonds between Korea and China in 1876 with the Treaty of Ganghwa. Pre-modern Asian diplomacy negotiated three predilections. First, the Chinese considered themselves supreme over Korea,

Taiwan, and the Ryukyu islands (Inoguchi 2006). Second, Korea considered itself central and did not want to communicate with the Japanese except in Tsushima, also known as Dokdo (Larsen 2006). Third, the Japanese reoriented their policies to study Western institutions from 1871 to 1895 (Inoguchi 2006, 9). The country receiving a cultural form required motivation to acquire information. A reluctance to adapt, as seen with China, reflected less on exposure but willingness.⁶³ Korea's treaty with Japan foreshadowed Korea's future involvement with Japan. The treaty not only dealt with Japan but also highlighted how Korea had to divorce itself from China's imperial sphere.

On February 22, 1876, Korea signed its first Western style treaty, the Ganghwa Treaty, and ended its isolationist policy. Sin Hon of Korea and Kuroda Kiyotaka of Japan were the chief negotiators of the 1876 treaty. Koreans did not expect the treaty to drastically effect the prior state relations with the Japanese (Larsen 2008, 63). The provision legally ended Korea's ties as a tributary state to China. The issue of Korea's sovereignty interested members of Western nations who wished to engage in trade with Asian nations.

Table 24 - Treaty of Ganghwa of 1876

Articles	Summary of the Final Version of the Regulations
Art. 1	Korea is an independent state; Japan wants "friendship" and "perpetual peace"
Art. 2	Within 15 months, both sides will send envoys
Art. 3	Official communication between two nations will be in Japanese and for the next 10 years, the documents will require a Chinese translation
Art. 4	Pusan and another port of Korea chosen at a later time will be open for trade
Art. 5	Coasts of 5 Japanese provinces and 2 Korean ports will be open set according to the Japanese and Korean calendars
Art. 6	Japanese vessels if stranded off the coast of Korea will be able to use ports that were not officially open; both countries ought to help other if in distress
Art. 7	Japan will survey the coast of Korea

⁶³ Similarly, adopting Christianity in Asia mattered less with exposure to missionaries but receptiveness of communities based on geopolitical factors (Kane and Park 2009).

Art. 8	Japan will send an envoy to Chosen to settle disputes with local authorities
Art. 9	Either government may investigate fraud owing to debt and be “friendly”
Art. 10	Extraterritoriality applies reciprocally
Art. 11	“Friendly” relations and 6 months to discuss any disagreements over articles
Art. 12	To ensure “friendship” immediately ratify the treaty

The treaty between Japan and Korea contained 12 articles. The first article stated that Japan and Korea, referred to as Chosen, are independent and sovereign nations. The second article indicated that from the signing of the treaty up to 15 months afterwards, Japan could send an envoy to Chosen at anytime and Chosen could likewise send an envoy to Tokyo. The negotiation for the treaty painfully illustrated how the Korean negotiator, Sin Hon, and others were simply unaware of the rules that guided the Law of Nations. The preference of Japan was stated first. The treaty established the official language for communication between the two parties would be Japanese and Chinese. For ten years after the signing of the treaty, Japan will send documents to Chosen in Japanese with a Chinese translation, while Chosen will send documents to Japan in Chinese (art. 3).

As an event, the ratification of the treaty fractured Korean diplomacy. The Ganghwa Treaty challenged Korean foreign policy in three key ways. First, the document granted Korea legal status as a sovereign nation. Second, the treaty introduced the decorum used for writing Western style treaties, which fixated on establishing “friendly” relations. Third, Korea opened its ports to future trading partners including Western nations as a result of the treaty. The economic impetus was clearly stated in the treaties.

The treaty articulated Western legal concepts such as sovereignty and extradition to the Koreans. The treaty included the recognition of Korean sovereignty and an end to

tributary ties with China. Sovereignty also ended the practice of Japan paying tributes to Korea (art. 4). Japan emphasized Korea's status as an independent nation. As independent nations, the two countries promised "perpetual peace" (art. 1) and "friendship" (art. 1, 9, 11, 12, and art. 10 supplemental).⁶⁴ Reciprocal rights to extraterritorial jurisdiction (art. 10) and symmetric aid for vessels in distress (art. 6 and art. 1, 10 supplemental) signaled "friendly" conduct.⁶⁵ Extradition rights applied for subjects of both nations (art. 10). The word for "extraterritoriality" (*jigaiho*) entered the Asian lexicon. Extraterritoriality in Asia, as Cassel (2012) explored, incited debates regarding states' rights to sovereignty and protection of private properties. The "friendly" wording stylistically distinguished Western treaties from Korea's treaties with China.

Japanese officials capitalized on Japan's twenty years involvement writing treaties with Western nations. In the supplemental treaty to Ganghwa, the Japanese officials explicated how Japan had "for many years back maintained friendly relations" with foreign countries (Chung 1919, 212, art. 10 supplemental).⁶⁶ Japan used "experience" to instruct Koreans of proper conduct when interacting with foreigners. The Japanese and Koreans made their communications available to Western officials.

With the treaty of Ganghwa, the Japanese persons' access to Korea extended beyond the port cities. The three open ports (art. 5) were significant, but the ports are not at the forefront in the text. The Ganghwa treaty opened Pusan and later Incheon and

⁶⁴ Articles 11 and 12 justified the authoritative legality of the treaties. Like other Western treaties, the importance of trade with limited restrictions appeared to be the intent of the treaty.

⁶⁵ Article 6 was particularly beneficial to Japan. The article stated that if a Japanese vessel could not reach one of the designated Korean ports due to weather, shortage of fuel or provision, and the vessels may enter any port of Chosen. The article also stated that if a vessel from either country was shipwrecked or stranded, either country should offer aid.

⁶⁶ The Japanese officials instructed Koreans to allow persons who took refuge in Korea, after a shipwreck, permissions to return to their native land. In the 17th century, Hendrick Hamel's briefly stayed in Korea after a Dutch vessel careened off the coast of Korea, but Hamel escaped (Ledyard and Hamel 1971).

Wonsan to foreigners. Korea's increased accessibility coincided with Japan's micro-management of Korea's diplomatic conduct (art. 2, 8, 9 and art. 2 supplemental).⁶⁷ Through legal text, Japan aggrandized their facility to negotiate with Western officials. Legitimated first with words, Japan then used economic means to seize control.

Opening treaty ports was naturally listed as one of the main objectives of the treaty. Japan had Chosen open ports of Pusan and two additional cities for commercial trade with Japan (art. 4). The designation of the two ports was granted to Japan (Yi 1984). And the Japanese were able to lease land, rent buildings, and build on Chosen property. The Koreans promised to open two from the list of five ports of Japan, which are Keikin, Chiusei, Jenra, Kensho, and Kankio for Chosen's use (art. 5).

The supplementary treaty appended to the Ganghwa treaty on August 24, 1876 indicated the direction that Korea and Japan's relationship would be in decades to follow. The major points of the supplemental treaty extended the rights of Japanese citizens in Korea and even requested that the watch-gate erected by the Korean government in the Korean city of Pusan be removed so that borders could be redrawn (art. 3). Koreans required permission from the Japanese government to visit Japan (art. 5); permission was not needed for a Japanese citizen to visit Korea. In terms of currencies, Korea had developed paper currency in the 15th century (Sukawa 2009) that the Japanese no longer wanted to accept; the Japanese required trade with Japanese coins (art. 7), but Korean currency unusable in Japan. Article 10 of the supplementary treaty interestingly noted Japan's relations with foreign, i.e. Western, nations.⁶⁸ The article requested that Korea

⁶⁷ The two sides agreed to allow trade among subjects of each nation without interference of either government (art. 9). The Japanese government appointed officials to reside in ports of Chosen (art. 8). Furthermore, Japan wanted to survey the coastal lands of Chosen (art. 7).

⁶⁸ From Chung's and Tong's (1980) compilation of the treaties.

extend its treaty with Japan to include allies of Japan, in case of extenuating circumstances to help ships stranded off the coast of Korea. Koreans should request an agent of the Japanese government to help send the ship back to its native country. Such practices ensured smoother economic exchanges.

Gradual improvements for trading conditions in Korea occurred years following the Ganghwa Treaty. The telegraphy lines from Seoul to Pusan and Wonsan were built in 1888 and 1891 respectively (Larsen 2006, 67). The eastern Korean port city of Pusan had appearances of a Japanese port town (Larsen 2006, 55). According to an eyewitness account in 1893 by Sakurai Gunnosuke, “Japanese-style shops lined the downtown streets” (Duus 1995, Larsen 2006, 55). By 1897, Korea used the gold standard as Japan had begun using gold as well. But gold was not used as a medium for exchange (Larsen 2006, 57). Korea’s coastline grew more cosmopolitan to accommodate the higher volumes of trade.

Consequences of the Treaty

Macro-level exchanges affected micro-level interactions for the merchants and farmers in Korea. Other outcomes of the treaty affected daily conduct. Korean merchants accepted Japanese coins and no longer circulated Korean paper currency (art. 7 supplemental, Sukawa 2009). The Japanese were allowed to bury their dead in Korean soil (art. 6 supplemental).⁶⁹ Japanese envoys traveled further inland into Korea (art. 4 supplemental). Through travel into the interior, Japanese goods spread to commoners. Though the Japanese were unpopular, Koreans enjoyed high quality Japanese goods (art. 8 supplemental). And the influx of trade after 1876 developed a native entrepreneurial class (Eckert et al. 1990, Haggard et al. 1997). Korean political elites, however, rejected

⁶⁹ Intra-European treaties featured *droit d’aubaine*, the law regarding the dead, for inheritance and burial purposes.

Japan's intrusion into Korea's physical space for ideological reasons (Lefebvre [1974] 1991). The intellectual debates had little effect on the lives of Korean commoners that preferred opportunity to gain materially.⁷⁰

Japan helped to build the industrial infrastructures in Korea. Years following the Ganghwa Treaty, gradual improvements for trade occurred. The telegraphic lines from Seoul to Busan and Wonsan were built in 1888 and 1891 respectively (Larsen 2006, 67). Korea's industries expanded and farming focused on exporting grains (Hong 1990). Japan took advantage of shorter legal contracts with Koreans to build infrastructure. Japan concluded shorter treaties often classified as memoranda on fisheries, telegraphs, and railroads to gain piecemeal control of Korea's economic ventures before Korea or China grew aware of how crucial communications and travel infrastructures were for industrialization.

Coincidentally, Japan re-negotiated several treaties with Western nations in 1894 and 1895 to undo earlier unequal treaties of the 1850s. Japan's rise militarily changed the minds of European diplomats over Asia's role in the international system. Soundly defeating the Chinese in the Sino-Japanese war of 1894-1895 gave Japan control over the Fêngtien province, which included modern day Taiwan (1895, art. 2).⁷¹ Japan carved out parts of Asia and masked their territorial expansion as an effort to build a unified Asia. The Japanese popularized pan-Asianism, which promoted advanced industrialization and cosmopolitan educational reforms in the 19th century (Hahm 2006, 46). Korean scholars who were educated in Japan initially supported Japanese involvement in Korean affairs

⁷⁰ During the Colonial period, the Japanese hired Koreans of lower birth statuses to work as low ranking officials in Japan's prisons and administrations.

⁷¹ In the Sino-Japanese treaty, the two acknowledged Korea's status as a sovereign nation (1895, art. 1).

but withdrew their support when dissent from the Koreans grew violent (Duus 1995, 226).

Table 25 - Supplemental Treaty of Ganghwa of 1876

Articles	Summary of the Final Version of the Regulations
Art. 1	If stranded, Japanese vessels may proceed into stations after telling local authorities
Art. 2	Japanese officials can freely send letters within Korea
Art. 3	Japanese subject may rent land in Korea; Shumon (watch-gate) and Shotsumon (barrier) that Koreans erected against Japan should be removed
Art. 4	Japanese in Pusan can travel the radius of 10 ri (about 2.44 miles) freely but Japanese should be allowed to further into Torai
Art. 5	Japanese may employ Korean natives
Art. 6	Dead Japanese should be placed in proper burial sites
Art. 7	Koreans pay using Japanese coins; Japanese may use Korean coins
Art. 8	Koreans may enjoy what they purchased or received as gifts from the Japanese
Art. 9	Japanese boats surveying Korea should be housed in Korea if the boats need to be docked
Art. 10	Japan had “friendly” relations with Western nations longer so Japan recommends that Korea allow any persons from distressed vessels take refuge in Korea; Korea should help return home anyone that wishes to leave
Art. 11	If the document causes an “embarrassment” to commercial relations then the contents of the treaty may be reviewed within 1 year

The Ganghwa treaty affected the geopolitical power dynamics in Asia. Other countries including Russia wanted Korea to maintain its status as a sovereign nation (Lukin 2006, 25). The 1882 treaty between China and Korea was another unequal treaty following the 1876 treaty for Korea with Japan. The Ganghwa treaty initiated a period when Korea signed many additional international treaties with Japan, the United States in 1882, Germany in 1882, France in 1886, Italy in 1884, Russia in 1884, and other nations. The opening of Korea did not improve Korea’s economic basis substantially (Deuchler 1977, 197). As discussed in the previous chapter, the 1882 Treaty of Maritime and Overland Trade intensified an unequal relation between China and Korea. The Chinese character for sovereignty and independence was used interchangeably.

Treaty of Amity and Commerce with the United States (1882)

The Ganghwa treaty between Japan and Korea in 1876 promulgated subsequent events. Berezin (2012) noted the events as “templates of possibility.” Korea’s possible turn led to multiple treaties with similar economic implications in Korea. The format of the Ganghwa treaty was replicated in Korea’s treaties with Western nations. The Korea-U.S. Treaty of 1882 had many names including the Treaty of Jemulpo (present day Incheon), Treaty of Jenchuan, and the Shufeldt Convention. Korea’s Treaty of Amity and Commerce with the United States highlighted cultural differences, emphasized mutually beneficial trading conditions, and encouraged formal scholarly exchanges.

The United States and Korea interacted with each other mainly via legal documents because few Asians traveled to the West and only a handful of Westerners resided in Asia. The language of the bilateral treaties promoted equality, but each nation wanted greater advantages. The United States requested that the Korean government to grant American citizens rights that were “to the benefit of the United States” in a draft version of the treaty, but the passage was edited out (draft version, art. 10, Korea 1891). The relations between the Korean and the American governments were relatively peaceful with the exception of isolated attacks against foreigners in Korea.

Table 26 - 1882 Treaty of Amity and Commerce Summary

Articles	Summary of the Final Version of the Treaty
Art. 1	Request for “perpetual peace and friendship”
Art. 2	Both sides appoint diplomatic and consular representatives
Art. 3	Both sides help vessels in distress but clandestine goods can be confiscated
Art. 4	Americans enjoy personal freedoms without interference from local authorities; mutual extraterritoriality; King of Korea requested to amend laws in accordance to international standards
Art. 5	United States granted the Most Favored Nation status
Art. 6	Koreans in the United States may rent and purchase property; the same goes for Americans in Korea; Americans are prohibited from transporting native produce to different ports of Korea
Art. 7	Ban opium trade

Art. 8	Ban the trade of ginseng; ban the export of food stuffs if the Korean King fears famine
Art. 9	Strictly limit the sale of firearms and other weapons of war
Art. 10	Citizens residing in either land have the right to employ natives
Art. 11	“Students of either nationality” are encouraged to study abroad
Art. 12	Every 5 years the two parties can reexamine the treaty
Art. 13	Official communications will be done in Chinese or English with a Chinese translation
Art. 14	Ratification within one year of the signing of the treaty

The treaty’s cultural and economic stipulations secured the Americans’ future presence in Korea. The 1882 treaty secured the most favored nation status for Americans and also granted Koreans multiple mutually beneficial conditions. First, conceptualizing the state as a sovereign and independent entity became a challenge for the Koreans. The drafts of the 1882 U.S. and Korea treaty demonstrated the various meanings of nationhood according to the Western and non-Western context. The Western concept of nationhood relied on the theory of sovereign equality. The notion of sovereignty departed from the Asian view of the tributary state system, which China called, the “Brotherhood of Nations.” Secondly, granting foreigners extraterritorial jurisdiction and religious freedoms created another challenge. The different drafts of the 1882 treaty encapsulated the economic, political, and cultural cleavages that the two nations faced.

The core implications of the 1882 treaty between Korea and the United States was assuring reciprocal trade benefits, granting the Americans religious freedoms, and establishing roots for intellectual exchanges between the two nations. The two countries interacted with each other mainly with legal documents because few Asians traveled to the West and only a handful of Westerners resided in Asia. The language of the bilateral treaties promoted equality but each nation wished to take actions that benefited one side more. The United States attempted to gain more from the treaty and requested that the

Korean government to grant American citizens rights that are “to the benefit of the United States” without stating what the specific rights were (English version, art. 10, Korea 1891). But the statement did not appear in the ratified version of the treaty. The relations between the Korean and the American governments were relatively peaceful despite the street level that occurred against foreigners in Korea.

The United States gained favorable trading conditions after entering Korea on friendly terms (Craven 2005, 345). Korea was a rational destination. Also, the several wars and the Taiping Rebellion made Americans weary of entering China. The Americans aggressively entered Japan but the Japanese government’s forceful modernizing campaign made the United States less necessary for trading purposes. The English language version draft of the treaty imbued the hope of establishing trade “between the United States of America on the one part, and the Kingdom of Chosen on the other part” (instrok.org). Americans in Korea pursued their callings and avocations as missionaries, doctors, and merchants near open ports.

America’s geographic distance from Korea prevented the United States from investing heavily in Korea. The United States’ practice of foreign diplomacy used economic relationships as a key feature. The U.S. primarily desired the most-favored nation status from China, Japan, and Korea (Dennett 1922). The 19th century roots linked to the United States’ usage of multilateralism in the 20th century as a foreign relations policy (Beeson and Higgott 2005).

Asian states’ reluctance to enter into free trade was the major obstacle for Western nations in the 19th century. Extraterritoriality, like the MFN clause, diminished Asian countries’ domestic sovereignty rights. Europeans considered Asian criminal

proceedings to be backward and inferior to Western legal systems. Extraterritoriality meant that if an American committed a crime against a Korean in Korea, the American would be tried in an U.S. court bypassing Korean laws. Between the U.S. and Korea, extraterritoriality was reciprocal because Koreans committing crimes against Americans were tried under Korean law. Extraterritoriality law highlighted cultural differences between the Americans and the Koreans.

Korea was a rational destination for expanding trade. The United States entered Korea on friendly terms and gained the most favored nation (MFN) status. Effectively, if Korea wrote a treaty with another nation after having granted the U.S. most favored nation status, the other nation's trading terms and benefits will transfer to the U.S. as well. The Chinese had already quarreled with the British on commercial matters. Several wars and the Taiping Rebellion made Americans weary of entering China. The Americans attempted to enter Japan aggressively but the Japanese government's forceful modernizing campaign made the United States less indispensable for trading purposes. The English language draft of the treaty imbued the hope of establishing trade between the United States of America and the "Kingdom of Chosen" (Korea 1891, 41). Foreign diplomats had called Korea, Chosen at the time. The social accommodations in the treaty allowed Americans in Korea to pursue their callings and avocations as missionaries, doctors, and merchants near open ports.

Content of the Treaty

The 1882 treaty emphasized six key building blocks to the American-Korean relations. The content of the U.S.-Korean treaty highlighted 1) disparities in criminal procedures such as extraterritoriality. The treaty also discussed the importance of 2) making maps and surveying coastal lands. Further, 3) taxing business transactions and 4)

fighting clandestine trade stood as other issues. Provisions 5) to accommodate Americans living abroad with social freedoms such as religious practice and efforts 6) to promote scholarly exchanges between the two nations enhanced the social reciprocity between the United States and Korea. The conditions aided Korean acceptance of American diplomats and missionaries in Korea.

Criminal Procedures

The United States challenged Korean criminal law. In the treaty, the high contracting powers “mutually agreed” that if Korea “modified and reformed the statutes and judicial procedure” domestically “in the judgment of the United States” to “conform to the laws and course of justice in the United States, the right of extritorial jurisdiction over United States citizens in Chosen shall be abandoned” (art. 4). The United States disapproved cruel punishments such as vicarious liabilities, hangings, and public floggings, which were common in Korea. Even though similar practices existed in the United States and Europe decided to chastise Asian courts. The procedure acted in accordance to the world society model since the United States encouraged Koreans to conform to American standards.

The United States acknowledged that change could not occur rapidly. Extraterritoriality protected Americans living abroad. Criminal activity such as trading firearms (art. 9) or Americans hiding Korean fugitives on American property (art. 10) judged the gravity of offence based on cultural relevance.⁷² Since the Korean government feared internal disruptions such as the Imo Soldiers’ Mutiny, Koreans

⁷² The final version included articles 11 through 14. Article 11 discussed student exchanges and encouraged it as “evidence of cordial good will.” Further, the treaty included the possibility to renegotiate five years after ratification in 1887 (art. 12), requested the use of Chinese and English translations in future correspondences (art. 13), and required the ratification of the treaty within 1 year of May 22, 1882 (art. 14).

possessing illegal firearms suffered worse punishment than Americans trading munitions of war without proper permissions.

Maps and Taxes

The United States established clear trading objectives with tax rates and mapping. The officials settled on import, export, and tonnage duties (art. 5).⁷³ Tonnage dues were set at five mace per ton, paid once every three months which were due “according to the Chinese calendar” (art. 5).⁷⁴ By adopting the Chinese lunar calendar, the United States catered their trading interests to Korean customs. The Americans desired to study Korean language (art. 11), customs, and geography.

As important as setting trading conditions were, the Americans were generally curious of the coastal geography. Surveying of coastal lands eased future voyages and furthered potential access. The treaty with Japan (1876, art. 7) and the United States (1882, art. 6) requested to survey Korea’s coasts. The coastal survey was featured in many treaties including the 1882 treaty with the United States and the 1883 treaty with Germany. Surveying the coast was also mentioned in article 7 of the 1876 Treaty of Ganghwa. The legal conversation regarding the calendar, clandestine trade, native produce, and so forth, integrated cross-cultural expectations for commerce.

⁷³ The English language draft discussed plans for distressed vessels and payment for repairs.

⁷⁴ The Korean draft of the treaty’s fifth article stated that “daily use” goods would require 10% ad valorem duties, whereas the final version stated that daily use items “shall not exceed an ad valorem duty of thirty per centum” (art. 5 instrok.org). The differences in syntax from the two versions that discussed trade also included how the Korean draft included a list of goods such as “foreign wine, tobacco, clocks[, and] watches,” to be luxury items that would take 30% ad valorem duty (instrok.org). In both versions, the term “native produce” was used to indicate export goods requiring 5% ad valorem. Although both versions set the tonnage dues at five mace per ton which are to be paid once every three months, the final version of the treaty stated that dates be marked “according to the Chinese calendar” (instrok.org). The United States attempted to align their trading interests with Korean customs with the adoption of the Chinese lunar calendar. Dictating the calendar helped to assure that both parties understood one another’s expectations. The U.S. drafters requested that the Koreans levy “no other kind or higher rates of tonnage dues or duties for imports or exports or coastwise trade” to citizens of the United States (art. 7, instrok.org).

Against Fraud

The final version banned clandestine trade, which the English language draft had mentioned. The final version of the treaty strictly prohibited contraband goods and added protections (final version, art. 6). Fraudulent trade was condemned (final version, art. 3). The U.S. and other Western nations feared that Asian nations could not properly follow Western normative procedures for trade. In article 2 of the final version, the states detailed proper conducts, such as preventing merchants from performing the duties of officers and officers from partaking in commercial activities. The separation of duties distinguished the correct traits of an officer according to Western standards.

Americans were permitted to reside in Korea. The treaty mentioned foreign residents interacting with local authorities, establishing residences, and transporting goods around multiple ports. Article 3 in the English language draft included provisions for families to reside near the open ports; vessels were not allowed to abuse the American flag or violate Korea's laws. Americans were allowed to build residences near Korea's open ports and to restrict trade to items "not declared contraband by law" (Korean version, art. 6).

Article 6 of the treaty banned clandestine trade, which the English language draft had mentioned. The final version of the treaty strictly prohibited contraband goods and added protections (art. 6). Fraudulent trade was condemned (art. 3). The U.S. and other Western nations feared that Asian nations could not properly follow Western normative procedures for trade. In article 2 of the final version, the states detailed proper conducts, such as preventing merchants from performing the duties of an officer and officers from partaking in commercial activities. The separation of duties distinguished the correct traits of an officer according to Western standards.

Accommodating Americans

The treaty expanded learning opportunities for students from each country. Students were encouraged to study abroad and learn the language and culture of the other nation (art. 12).⁷⁵ Language training and student exchanges gave persons of one country greater exposure to the other country's language, customs, and space. This theme of language exchange also appeared in Korea's treaty with Russia in 1884. Article 13 in the final version stated that the future correspondences should be conducted in Chinese between the United States and Korea.⁷⁶

In several key instances, the United States government tried to accommodate the needs of the Korean empire. The U.S. accepted the usage of the lunar calendar for merchants to pay taxes (art. 5). Even while the United States requested the king of Korea to modify the criminal law in Korea to reflect international standards in the same article. The treaty protected Korea's native produce in case of famine and also granted a ban on opium (art. 7) and ginseng (art. 8). The protection of Korean products appeased the royal negotiators. After the treaty, American officers, missionaries, and merchants entered Korea. Much internal intrigue developed around the growing number of foreigners on Korean soil.

A key significance was the signing of the treaty itself. The ratification signified Korea's status as an independent and sovereign nation. However, the Korean negotiator's draft written in Chinese explicated how Korea, "being a dependent state of the Chinese Empire, ha[d] nevertheless hitherto exercised her own sovereignty in all matters of internal administration and foreign relations" (Chinese version, art.1,

⁷⁵ Chinese draft of article 8 discussed rights to employ natives and open channels for student exchange.

⁷⁶ The Chinese version of article 10 discussed official languages for future correspondences—Chinese and English.

instrok.org). The U.S., having written treaties in accordance to standards of international law for over a century, did not emphasize sovereignty because it was readily internalized. It appeared difficult for Korea to act in “perfect equality” (art.1, Korea 1891). The final version of the treaty omitted mention of “sovereignty” or “perfect equality” and requested perpetual peace between “their respective Governments” (art.1, Korea 1891, 41).

The negotiators specified language use for future interactions. The effort to establish “friendly relations” in the American’s draft of the treaty (art. 9) bolstered the Americans’ attempts to appoint two special committee members within the next 18 months to assist merchants. The Korean’s position emphasized future cultural and linguistic exchanges so that the two parties instead of a strong emphasis on trade (art. 9, Korea 1891). Language training and student exchanges gave persons of one country greater exposure to the other country’s language, customs, and space. Article 13 in the final version stated that the future correspondences should be conducted in Chinese.⁷⁷ The Chinese language draft included suggestions on how Korea could conform to “international law and without unequal discriminations on either part shall be had” (art. 9, instrok.org). This draft showed how Korea wanted to adapt to the international model. Having “friendly relations” implied that countries conformed to the formal greetings found in Western style treaties. The friendly discourse also appeared in article 11, which encouraged student exchanges. The treaty expanded learning opportunities for students from each country. Students were encouraged to study abroad and learn the language and

⁷⁷ The Chinese version of article 10 discussed official languages for future correspondences—Chinese and English.

culture of the other nation (art. 12).⁷⁸ Peace was mentioned in article 14 while stipulating the ratification process for the treaty.

Christian Missionaries after the Treaties

Europeans and Americans endeavored to increase Christian converts. The Berlin West Africa conference (1884-1885) identified commerce and humanitarianism as the two main goals for colonial expansion. The two motives similarly compelled the U.S. to enact legal ties and establish foreign missions. As one of the two main missions of the Berlin West Africa Conference, the spread of Christianity was a main concern for Europeans. The Koreans granted the American freedom of religions but limited their economic activities in Korea. In the 1882 treaty, Americans were allowed to pursue their calling but were banned from transporting “native produce from one open port to another open port” or carrying import goods into the interior in Korea, so as to limit Americans’ mobility (art. 6, Korea 1891, 46).

The trend of decolonization by the mid 20th century (Strang 1990, 1991) partly answered why the United States was not interested in colonizing Korea.⁷⁹ Despite that trend, Germany (Steinmetz 2003, 2007), France, and Great Britain expanded or held onto colonies throughout the world. Unlike an argument on American exceptionalism (Lipset 1997), which suggests that America was borne on notions of liberty that far exceeded European states’ greed for domination and small economic gains, in Asia strategy prevented the Americans from an easy entry.

Entering Korea on friendly terms granted the United States trading advantages through the most favored nation clause. The United States’ strategy relied on peaceful entry. By the 1860s, the British had a strong hold over the major ports of China. The

⁷⁸ Chinese draft of article 8 discussed rights to employ natives and open channels for student exchange.

⁷⁹ Largely the decline Spanish, Portuguese, and French empires contributed to the decline of colonies.

Chinese had already quarreled with the British on commercial matters. Even though Russia was dismantling from within, the Russian empire still had great interest in the northern border regions of China. Further, Russia and Japan volleyed control over the Sakhalin Islands and the fisheries industry were dependent on each other.

Granted, most nation-states wanted to build economic ties with other nations instead of heralding their arrival as conquerors. Even to go back to Fieldhouse, colonialism was seen as the last resort in inter-state relations. The legal relationship that developed via treaties was important because contracts in businesses became so prevalent. As the disavowed Native American treaties indicated, the steps towards colonialism for the United States was also based on legal arrangements. Colonialism from within did not necessarily withhold the Americans from colonizing other nations. Japan had colonized the residents of the Ryukyu Islands, the Ainu after the Meiji Ishin (Hirano 2009) and expunged that nationality towards a new vision of unified Japan. Though not all colonial efforts were economic, the less materially valuable groups became more fungible.

Further, Go (2008) and other scholars (Colas 2008, Ferguson 2005, Immerman 2010) indicated that the U.S. was an imperial power. Go (2008) and other scholars that focus on the Philippines trace American imperialism back to the 19th century even before the Spanish American (1898) and the Insular wars wherewith the United States ruled over the Philippines. The U.S. Supreme Court ruled on the insular cases following the Spanish American war and the United States gained territories in Guam, Puerto Rico, and the Philippines. The United States also annexed Hawaii, which had been its own monarchy in 1898. Colas (2008) suggested that American imperialism started after World

War II. Notwithstanding the various implied role of American foreign policy (Colas 2008, Go 2008), Korea was not a colony of a Western state. The United States did colonize Pacific islands.

After 1882, American officers, missionaries, and merchants entered Korea. Much internal intrigue developed around the growing number of foreigners on Korean soil. During the late 19th century, foreigners including the Chinese disrupted the isolationist policies of the Korean king's father, Daewongun. The reaction towards the foreigners intensified the factions that formed within the Korean bureaucracy. These factions often divided along the lines of how to interpret Confucian texts and address the most proper conduct in terms of domestic governance and foreign relations. The "Easterners" and "Westerners" factions formed. Then the division between "Southerners" and "Northerners" followed. The "Northerners" divided into "the Great North" and the "Small North." After "the Easterners," "the Westerners," and "the Great North absolved," "the Old Doctrine," "the Young Doctrine," "the Southerners," and the "Small North" formed. By the 1880s, the dominant parties were "the Old Doctrine" (*Noron*), "the Young Doctrine" (*Soron*), "Southerners" (*Namin*), and "the Small North" (*Sobuk*). The "Old Doctrine" had the most power followed by "the Young Doctrine" (HK Kim 1997, 217). Although the Qing government had upheld the policy of non-interference for Korea's domestic policies, the Qing government found ways to use their trade relations to consistently inquire about Korea. King Gojong's father, Daewongun secretly helped the soldiers who plotted a mutiny against King Gojong and Queen Min (1851-1895).

Consequences of the Treaties

In key instances, the United States government accommodated Korean goals for domestic autonomy. Korea kept their native produce, maintained existing criminal

proceedings, and opened channels for economic and intellectual exchanges. Thus, the U.S. used the lunar calendar for merchants to pay taxes (art. 5). In conclusion, even while the United States requested the Korean king to modify the criminal law to reflect international standard, the treaty protected Korea's native produce in case of famine (art. 7), and banned trade of opium and ginseng (art. 8). The protection of Korean produce appeased the royal negotiators. After the treaty, American officers, missionaries, and merchants entered Korea. Korean elites aligned themselves with the American missionaries and sought refuge with the Americans after the Japanese overtook Seoul (Kane and Park 2009).

The modes of accommodation shown in the treaty addressed three theoretical insights related to 1) Steinmetz's ethnographic field (2007), 2) Bhabha's hybridity thesis (1994), and 3) Meyer's top-down approach to cultural diffusion (Meyer et al. 1997). First, as Steinmetz noted, the work of the colonizer at a given site changed through interaction. The American missionaries who interacted with elite to illiterate Koreans promoted protections for religious freedoms and expanded educational opportunities to women and persons born of low status. Second, the dialogue between the Korean and American negotiations charted how Koreans valued domestic sovereignty despite its reminiscent allegiances to China. The new laws promulgated a hybrid approach (Bhabha 1994). Third, American interests superseded Korean recommendations, which supported the world society theory (Meyer et al. 1997), but Americans criticized Korean law with few steps towards change. Through the treaties with the United States, Koreans encountered economic and educational opportunities that forced Koreans to question

traditional practices. Relations with China focused on past customs related to trade and tributes.

How the Koreans appraised China

The Chinese did not appraise Korea as an independent and sovereign nation, which was contrary to official policies. Huang Zunxian in 1880 prepared a policy for Korea that wanted to use Korea as an ally to keep Russia at bay (Deuchler 1977, 88). Deuchler wrote, “China and Korea really formed one and the same family” (1977, 88). The foreign policy initiative of *sadae* simply meant that Korea would “serve the great” and the great at this period meant China.

After later losing the 1895 war to Japan, China’s intra-Asia relationships was weaker than ever before. In the Treaty of Shimonoseki (1895), China had to recognize its status as the former suzerain to Korea. Scholars of China reflect upon the period between 1842-1943 as the “treaty century” (Fairbank 1992, Gray 2002, D. Wang 2005) and the period is commonly known as *guochi*, the time of national humiliation (D. Wang 2005, 1). Fairbank’s interpretation of the treaties represented an older historiography of the clash between the cultural values of the “East” versus the “West.” The distinction between Eastern versus Western values returned with Huntington’s “Clash of Civilizations” (1993) thesis.⁸⁰

In Korea, incidents that disparaged the government occurred in the late 19th century. The clashes within Korea were based on class restrictions to material resources. Infamously, the Imo Mutiny of 1882 highlighted the resource constraints that low-ranking soldiers endured. On July 23, 1882, Korean soldiers who were given inedible

⁸⁰ However, interpreting China as a weak state agreed with Marxian historians of research depletion as a key reason for conquering.

rice grains. The angry band of soldiers grew in size as commoners, and downtrodden members of Korean society seized the opportunity to coalesce against the ruling party. Much resentment grew towards the aristocracy. The Confucian literati were exempt from paying the poll tax (*sinp'o*). Additionally, the commoners were required to contribute to private Confucian academies known as *sowon* when these institutions issued a *kant'ong* decreeing a need to perform ceremonial rituals rites. The grain loans (*hwanja*) were in place to make up for the 1% wastage (*mo*) of grains. The Imo Mutiny signified the breakdown in the aristocracy's ability to maintain the military. Daewongun's coup in 1884 that utilized the soldiers hoped to expel the Japanese out of Korea. He was displeased with the Min family gaining more wealth through the rice trade with Japan.

After the Imo Uprising, the Korean government wrote the Treaty of Chemulpo as an official apology to the Japanese. Koreans agreed to pay 50,000 yen to the family of the victims. Furthermore, the treaty called to punish the culprits for 15 days, provided venerable funeral arrangements for the victims, paid the indemnities afflicted upon Japanese troops, and allowed the Japanese to establish a battalion to protect the diplomatic delegation for up to 5 years (Deuchler 1977, 135). The treaty extended trade since persons were now allowed to travel up to 100 li around Inchon, Pusan, and Wonsan. Also, the town of Yanghwajin opened as a new marketplace. Hamhung and Taegu allowed commercial trades. The agreement permitted Japanese ministers, consuls, their retinue, and dependents to travel inland. Lastly, the Koreans were to send a delegate to Japan to apologize in person for the incident (Deuchler 1977, 135).

Breakdown of Confucian Legal Order

The Confucian ideals of harmony based on the ministers being loyal to the ruler weakened in Korea after the Imo Uprising of 1882. The mutiny involved Chinese and

Japanese citizens on Korean soil. The Korean royal family requested the Chinese emperor to send troops to quell the Imo gallun. The soldiers abducted 6 Japanese nationals, tortured and murdered them. The coup in 1884 also signaled the poor agricultural techniques that led to crop failures in Korea. Symbolically, the coup, reinforced the Korean royalty's obedience towards the Qing emperor. All the while, Korea's office of Extraordinary Affairs (*T'ongni kimu amun*) corresponded with neighboring nations and Western envoys from afar. The U.S.-Korean treaty of 1882 brought to Korea trading partners and religious leaders. In 1883, Korea signed treaties with several other Western nations including Germany and Great Britain.

Years after the treaties granted Korea its rights to sovereignty, China disregarded Korea's internal sovereignty and sent troops to quell a domestic uprising. By August 6, 1882, the Qing government dispatched troops to quell the uprising in Korea. The king of Korea, who labeled himself the humble "servant," conveyed a grateful message to the Emperor of China for sending General Wu and his troops to Korea for such as "worthless" purpose (Larsen 2008, 87). Additionally, China's foreign minister Li wanted the Regulations for Maritime and Overland Trade to reflect the suzerain state relations. The importance of agreeing to legal terms grew in the 19th century.

Legal Training Systematized

With standard legal language came standard legal training. To further instill this message of legal reforms, the standardization of language used in the treaties took form in the late 19th century. Formalization of law came with the globalization of the legal profession (S. Liu 2013). The profession grew over time and across space. Even today, the impetus to standardize legal training despite language, national traditions, and procedural differences attested to the European efforts of the 19th century.

Approaches to the sociological inquiry of lawyers examined functionalism, structuralism, interactionalism, and ecological institutionalism. Social structures and the functional aspects of the legal profession added to developments in the United States. The functional approach examined the role of the profession within the society. The interactionalist approach focused on the workplace dynamics among lawyers. As a form of collective action, the legal profession exhibited a degree of elite reproduction (S. Liu 2013, 4). As a social process, the legal profession formed group boundaries.

Treaty of Friendship with Germany (1883)

The German treaty with the Koreans was emblematic of a wave of treaties that Korea signed with other western nations. The treaties with Western nations after the American treaty in 1882 followed a formula. The formulaic treaties were near facsimiles of one another with only the names of contracting parties changed. Great Britain, Germany, Austria-Hungary, Italy, and France signed treaties with Korea in the 1880s to broaden Korea's presence in the international community. Examining Germany's treaty with Korea highlights the changing format of the international legal system. The syntagmatic axes of the documents remained stable while the paratactic axes (i.e. the elements within the treaties) became interchangeable.

The government of Great Britain signed a treaty with the Koreans. The German treaty was a copy of the British-Korean Treaty of November 26, 1883 (Deuchler 1977, 169). In the British-Korean Treaty, known as the Willes Treaty, Great Britain gained better tariffs and were more flexible than the treaties that Korea signed with the Americans or the Japanese (ibid). The British were able to negotiate much lower tariffs on goods such as textiles. Britain's minister in Tokyo, Parkes wrote,

“It would be vain, I thought, for [K]orea to suppose that the Western Powers would accept interior terms to those which [K]orea had granted to China and Japan, as it was obvious that their people could conduct no trade in [K]orea unless they were placed, in regard to commercial advantages, on an equal footing with the subjects of those two nations” (Larsen 2008, 92).

Even the Chinese minister, Li Hongzhang, approved the treaty’s contents for it did not inflict any discomfort for the Chinese. The Qing administration’s interest was to keep Korea as a vassal state to China. And the format of the treaty was used with Italy on June 26, 1884, Russia on July 7, 1884, France on June 4, 1886, and Austria-Hungary on June 23, 1892. It was part of Li’s strategy to have Korea write treaties with Western nations. Li needed to convince the Korean minister, Yi Yu-won, to enter treaty relations. Yi wrote, “Trade with Japan is already concession under duress trade with the West would be unthinkable” in 1882 (Larsen 2008, 74). Li understood that in order for Korea to not fully fall into Japan’s influence, competing international interest was necessary to not block out China completely. Li also encouraged Korea to build up military readiness and to establish an office for foreign affairs, the Office of Extraordinary Affairs (Larsen 2008, 70). Li’s stance was most appropriate for the time period since the military rebellion in Korea led to domestic turmoil in the 1880’s.

Throughout the 19th century the treaties exhibited patterns of increasing complexity and increasing standardization. In the literature on legislation and legal language, the exposure to earlier treaties and the writing of similar treaties with multiple nations allow for the formulaic nature of the text. The treaties had been formalized as more nations established offices that handled multiple transactions of bilateral treaties

and trading agreements. Textual discourse can be measured for their similarities and differences.

Messages come across more coherently if they are delivered in an extremely consistent format. Strang and Bradburn (1999) studied the effects of neo-liberal discourse and HMO policies from 1970 to 1989 to uncover an organic formation of a monopoly. The monopoly can occur for a language. With the HMO policies, the content of the policies sounded similar from state to state. With the treaties, the syntagmatic axes of the documents formalized a format for writing the treaties. Thereafter the paratactic axes of the treaties also aligned in that the content of the treaties mirrored other treaties. The language of diplomatic discourse for Asians for centuries prior to the 19th century was Chinese. The new language of discourse in Asia expanded to be English. The language for legal transaction used applications of Euro-centric “Law of Nations” conception of sovereignty.

The Treaty of Friendship with Germany exemplified the set of formulaic treaties that Korea signed with Western nations. It highlighted similar points that Korea’s treaty with the United States did. The issue of Korean sovereignty was of foremost importance. But recurring issues of trade and protection of foreigners in Korea emerged as well. In the treaty, the Germans considered Korea a “tributary of China” (Chung 1919, 214). The German-Korean relations still involved 1) laying out available treaty ports, 2) taxing trade, and 3) exchanging students for cross-cultural education.

Opening ports was a major part of the treaty. The treaty opened the ports of Chemulpo (Jenchuan), Woensan (Gensan), and Pusan (Fusan) and the cities of Hanyang (Seoul) and Yanghwachin in Korea for foreigners to use (art. 4). With opened ports, the

two nations forged paths to trade with each other. Tonnage dues for vessels were set (art. 5, part 7). Germans were allowed to trade “all kinds of merchandise” without the interference of Korean officials if the foreigners paid the appropriate tariffs (art. 5).

The ebb and flow of foreigners increased with the passage of treaties with Western nations. To facilitate trade between Germany and Korea, the diplomats were allowed to travel freely with a passport and an escort (art. 2) and foreigners were reciprocally allowed to reside “at the capital of the other” (art. 2, Chung 1919, 173).⁸¹ The diplomats abstained from engaging in commercial activities (art. 2). The political and economic realms had nominal spheres of separations.

The social and educational realms converged to meet the economic and diplomatic needs of the regions. The two sides established cultural exchanges for future trade. Opened ports also opened avenues for cross-cultural exchanges. Germans were allowed to hire Koreans as “teachers, interpreters, servants, or in any other lawful capacity” without interference from the Korean government (art. 9). Koreans and Germans allowed students to study the “language, literature, laws, arts, or industries” and scientific research (art. 9).

Close examination of the treaties between Korea with Germany on November 26, 1883 and Austria-Hungary on June 23, 1892 bear striking similarities between the two documents. The syntagmatic axes of the treaties aligned in that the structure of the documents mirrored one another. Both the 1883 and 1892 documents are treaties of friendship, commerce, and navigation. Both treaties include 13 articles that start with the

⁸¹ Germans were allowed to travel for 100 li without a passport and if they were traveling into the interiors for the purpose of trade, they were banned from trading books, printed materials and other items banned by the Korean government (art. 4, part 6). The fine of 100 Mexican dollars will be charged for foreigners traveling without a passport.

pledge of “perpetual peace and friendship” between the kings of the respective countries (Chung 1919, 1 and 107). The 2nd article from both of the treaties discussed the same topic of high contracting parties appointing consuls in the other’s country. The 3rd article corresponded in the two treaties as well because they both discuss jurisdiction in the protection of the non-natives’ property while in Korea. Part 2 of the 3rd article appears in verbatim

“If the [K]orean Authorities or a [K]orean subject make any charge or complaint against a [German] subject in [K]orea, the case shall be heard and decided by the Authorities of His Imperial and Royal Apostolic Majesty” (Chung 1919, 108).⁸²

Continually, the formatting and writing of the treaties are consistent. Article 4 opens to the Austro-Hungarian empire treaty ports that were opened to the Germans almost a decade earlier. The ports of Chelmulpo or Jenchuan, Woensan or Gensan, and Pusan or Fusan along with access to Seoul, the capital of [K]orea, is available to foreigners. Article 5 is describing the rights to import and export goods in the ports.

The paratactic axes of the treaties aligned as well. Similar content was found in both the treaties. Consistently, both treaties sequentially emphasize laws against smuggling (art. 6), describe procedures to help distressed vessels (art. 7), limit arms trade with ships of war (art. 8), have the right to employ native [K]oreans (art. 9), enjoy reciprocal diplomatic privileges (art. 10), revisit the treaty 10 years after the official ratification (art. 11), provide a Chinese text of the treaty (art. 12), and ratify the treaty within one year (art. 13). Though this examples shares one country that is a signatory in

⁸² The translation was made from classical Chinese by Chung. The original text in German will be located for further analysis.

both treaties, other examples of generalizability in treaties come from other diverse nations across regions.

The Treaty of Friendship between Korea and Germany in 1883 patterned the treaty relations that Korea had with other Western nations. In terms of structure and the wording, the language of the treaties modeled each other. The reciprocal content of the treaties also emboldened Koreans' searches for Western allies during the period of Japanese colonization of Korea. Domestic turmoil in Korea resulted from the Korean aristocracy's inability to combat Japanese rule.

Kapshin Coup (1884)

In 1884, the distrust towards foreigners in Korea and trouble within the Korean bureaucracy enticed a small group of elites to lead a coup against the royal family. The sensational accounts of the murders elicited Koreans to distrust foreigners further. The two incidents grabbed the public's interest in these matters – the Yi family estate murder and the killing of a pharmacist. The Kapshin Coup came after the Yi Pom jin who refused to sell his portion of the family estate to a Chinese merchant although Yi's brothers sold their shares. The inability to access the area freely led the Chinese to attack Yi Pom jin (Larsen 2008, 123). Furthermore, citizens were enraged to learn of a Chinese soldier killing a Korean pharmacist's son and attacked the pharmacist (Larsen 2008, 98). The sensational accounts of the murders elicited Koreans to distrust foreigners further.

Within the Korean bureaucracy, the main impact of the coup affected the political elite of Korea most directly. The efforts to improve Korea's social conditions from within seemed impossible. Marginalized elites had orchestrated the coup. Park Yong-hyo and Kim Ok-kyun, who were both educated in Japan but came back to Korea after their studies to find themselves disillusioned with the Korean ruling class and left out of

the inner circle unable to influence policy. Along with So Chae-pil, who later settled in Wilkes-Barre, Pennsylvania, the men resorted to violence as means to create “enlightened” changes in Korea. The Min family, the queen of Korea’s clan, who were staunch loyalists to China, according to the Enlightenment Party kept Korea from modernizing the Japan had.

Social Darwinism influenced enlightenment leaders such as Yun Ch’iho (Chu 2005, 58). Hebert Spencer’s evolution of humanity particularly interested the Korean intellectuals who elevated Americans as more advanced, the Japanese as advancing, and the Koreans needing to attempt rising themselves above their current state. Yun personally “deplore[d] the dominance of the strong over the weak” but expressed how there must be a reason why the English seized control over the Native Americans (Chu 2005, 62).

The leaders of the Enlightenment Party (*gaehwapa*) who led the coup asked the Japanese for assistance since one of the main purposes of the coup was to thwart the Chinese and the Korean and aristocratic Min family. The reformers timed the start of their assassinations with a party attended by Western officials such as Foote, Aston, and von Moellendorf that celebrated the opening of a Post Office. On December 4, organizers of the coup murdered seven bureaucrats. On December 5, the reformers seized power and drafted a 14-point proclamation. The statement suggested reforms on land tax, measures to relieve the financial debt of the commoners, streamline the government, reduce government expenditures, eliminate government corruption and nepotism, and restructure the police and military systems (Deuchler 1977, 208).⁸³ The Korean mobs on the streets killed the many Japanese nationals who were often

⁸³ Kim Yong-sop (2005, 40) contended that tax reform was underlying objective of the coup.

unaffiliated with politics once word broke out of the Japanese aiding the reformers in the coup.

As George C. Foulk, an American Naval officer who was stationed in Seoul from 1884 to 1887 noted, the violence especially against the foreigners occurred on the streets. In his private letters, Foulk, stationed in Seoul from 1884 to 1887, he examined the Koreans mostly with a sympathetic gaze. Though his goal was to work in Japan, where he could speak the language fluently, the navy nevertheless placed him in Korea.

He retold the events of December 4, 1884 that detailed the events of the Kapshin coup. Word had gotten out on December 4, 1884 that the Japanese were collaborators of the coup and out on the streets, mobs “killed all the Japanese they found, stoning most of them to death” (Foulk 1884, 77). On December 20, 1884, Foulk described in a letter to his brothers and parents the “horrible calamity” developing in Korea where “Japanese people were being murdered” (Foulk 1884, 74). Widespread looting, robbing, and general mayhem ensued. General infrastructures of Korean society were destroyed. The Post Office that proudly opened in early December was utterly razed. Foulk instructed his brother to sell some stamps from the Korean Post Office included with the letter that shall never be issued again. Scott’s Stamp Shop on Broadway was identified as a potential buyer for the rare artifact (Foulk 1884, 79). From what he saw, Foulk assessed the Koreans as “God-less” people “full of pagan cruelty” who even refused to take medical advice from Western doctors who advised for patient, Min Yong Ik, to take in milk during his convalescence. The Korean caretakers disregarded the message and fed Min dog soup (Foulk January 5, 1885, 84). Foulk’s letters helped lead Western scholars to commend Japan’s colonization of Korea in 1910 as a step towards progress.

After the failure of the Kapshin Coup in 1884 in Korea, the Japanese government avenged the death of Japanese citizens with admonishments found in the Treaty of Hanseong. In January 1885, the Koreans signed the Treaty of Hanseong with the Japanese. The Koreans had to submit an “apologetic document” (art. 1), rebuild Japanese buildings destroyed in the coup (art. 4), pay for reparations of the Japanese victims of the coup (appendix to art. 2 and art. 3). After the 1884 coup, Japan and China signed the Convention of Tianjin, also known as the Li-Ito Convention, on April 18, 1885. The Li-Ito Convention agreed upon a mutual troop withdrawal, and the two sides promised to contact each other before deploying troops (Larsen 2008, 126). The unrest within Korea left a lasting impression for the Korean bureaucrats. The discontent among the elites led to social reforms, which affected all strata of Korean society in 1894.

The French found the treaties of this format to be unacceptable. The 1886 treaty with the French asked to include an article that would allow Catholic missionaries to proselytize in Korea (Deuchler 1977, 127). The actions of the French negotiators to ensure the safeguard of Christian missionaries is similar to the 1844 Treaty of Huangpu between China and France where the French ensured the repeal on the ban on Christianity in China. But with the French-Korean treaty, the French were unsuccessful and failed to convince the Korean negotiators in Tianjin. The French-Korean treaty did not allow for religious missions to take place.

Gabo Reforms (1894)

Social reforms entered Korea through the Gabo Reforms of 1894, which promoted compulsory education, removal of traditional social castes, and land tax reforms. In Korea, the treaties fomented new intellectualism where scholars directly engaged Japanese thinkers on the meaning of progress in Asia. The intellectual affinities

to Japan aligned with improving Korea's economy. Japan's industrial growth impressed the several Korean scholars. Japan espoused ideas of pan-Asianism in the 19th century (Hahm 2006, 46). Japan's increased role in Asian diplomacy displeased European statesmen.

The Independence Club started in 1896 and comprised a handful of Koreans, many educated abroad. The club published the first Korean vernacular newspaper, *Dongnip Sinmun* ("the Independent") using Hangul. The newspaper supported the Japanese early on. It informed Koreans that the violence that occurred after the Sino-Japanese War was attributed to illiterate Japanese and not to members of the Japanese government or elite class (Chu 2011, 96). The paper also supported the inevitable need to use Japanese currency instead of Korean currency (*Dongnip Sinmun* April 4, 1898). In 1898, the Independence Club abruptly disbanded because many Koreans disdained the club's views, and many leaders, including So Chae-pil returned to the United States. However, Yun Chi-ho (1865-1946) and other members of the Independence Club resisted Japan's annexation of Korea in 1910. The Japanese government later imprisoned Yun for 6 years for plotting against Japan (*New York Times* March 21, 1913).⁸⁴ Japanese entered Korea with for interest of the Theory of Uniting the Great East (*Daito Gapporon*). Korean intellectuals wanted Japanese modernization techniques to improve Korea from within (Chu 2011, 100). Japan's rule of Korea preceded advancements in Korea's economy.

The pro-Japanese ministers, many of whom were associated with the Kapshin Coup in 1884, helped pass the Gabo Reforms of 1894, which can be seen as progressive

⁸⁴ Yun Chi-ho, who had studied at Vanderbilt and Emory Universities, was also known to be Christian at the time he was convicted. His diary recounted racism in the United States (Yun and Song 2001).

reforms that brought Korea closer to standards of Western European civilization (Gong 1984). Gabo Reforms systematized silver currency and weights and measures for trade. It also eliminated traditional social classes of yangban or commoner status, abolished slavery, gave rights to outcasts known as paekchong, allowed widows to remarry, and reformed the criminal procedures (Yi 1984). The Korean court previously tortured criminals and often extended corporal punishment to members of the criminal's family if the crime was unusually heinous. The implementation of vicarious liability was removed. The reforms were so radical that members of the court opposed the measures and feared that the king had become too lenient towards his subjects.

For different reasons, nativist and pro-Japanese factions of the Korean government rejected Chinese or Confucian influences in favor of cultivating "native" customs. However, the longstanding cultural affinities with the Chinese were inescapable. Unlike the Chinese governmental officials who actively resisted the international system and Japanese government who adapted to the international system, the Korean government suffered from being marginal in both the international system and suzerain state system. Korea's treaty relations in the 19th century remained an important case to examine because they juxtaposed the external influences of the international system and Asian suzerain state system in one domestic sphere.

Duncan and Kim (2011) highlighted the multifaceted features of the reforms. The Gabo reforms "modernized" Korea. The pulls were toward the Western model and the Japanese model of modernization. The Royals along with the Gabo, Kapshin, Chŏngdong, and Taewŏn'gun factions illustrated how the late 19th century was a critical junctures for Korea domestically. As the voice of the Royals, King Gojong articulated on

August 5, 1882 how the Westerners were damaging Korea's stability. In his official records, he notes how the 1876 treaty with the Japanese opened three Korean ports. He notes how the treaty resulted in other treaties with Western nations of United States, England, and Germany. The exchanges with Westerners were considered off-putting "since the rituals of exchange with them are conducted as equals, there is nothing that violates the principles of morality" (Duncan and Kim 2011). King Gojong was referencing the morality of Neo-Confucian tributary orders that guided past international exchanges mainly with the Chinese. Some unprincipled manners of the Westerners involved stationing soldiers in Korea to protect commercial interests.

King Gojong was aware of the concept of international law. Signing treaties and conducting business were conduits of international law. But King Gojong wanted to reject Westerners' efforts to "spreading their teachings" of Christianity in Korea (Gojong 39, Duncan and Kim 2011). Christianity, according to King Gojong, represented the "false way" which poisoned the true teachings of Confucius and Mencius. But he made the distinction between the bad teachings of Christianity and the useful skills of scientific and mechanical advances.

The Gabo Reforms did not protect Korea from Japan's encroachments. At the conclusion of the Sino-Japanese War, China acknowledged in the Treaty of Shimonoseki of April 17, 1895 that Korea was an independent nation, legally ending Korea's tributary relations to China. The Treaty of Shimonoseki helped secure Japan gain authority over the Liaotung Peninsula and Taiwan. Japan had plans to annex Korea at this time, but the

Russian-led Triple Intervention, pushed Japan back. Queen Min was assassinated on October 8, 1895, and Korean royals hid to take refuge with the Russian legation.⁸⁵

The progressive idealists such Yun Chi-ho and So Chae-pil left for America temporarily because treaties with the U.S. government allowed for student exchanges and travel. So's two year old son starved to death due to neglect after So's parents and wife committed suicide (Hahm 2006, 42). Koreans who stayed in Korea or traveled to Western states had exposure to Christianity. The religion influenced the Progressives, who wanted to reinstate the Gabo reforms, because missionaries expanded educational opportunities to the various strata of Korean society and social reforms were a part of Christian teachings. Yun Ch'i-ho, So Chae-pil, Yu Kil-chun, Yi Seung-man, and Yi Sang-jae were all Protestants. After the failed coup of 1884, the Chinese Exclusion Act of 1882 stood as another barrier to the Koreans who wanted to enter the United States.

Yun Ch'i-ho wrote in his diary that based on the Chinese Exclusion Act, the American's "doctrine of equality" is "only skin deep" (February 14, 1890). Yun said "to enjoy the so-called inalienable right of man in this 'Land of Freedom' you must be white" (February 14, 1890). He went on to criticize America's past dealings with Native Americans, African Americans in the South, and the Chinese in the West. The utter "inconsistency between their acts full of the basest prejudice and their doctrine full of the loftiest and never to be realized catholicity" (Yun February 14, 1890) made America's dealings in Korea not to come out of goodwill.

Geopolitical context of East Asia

The geopolitical context in East Asia experienced another rupture in 1900 when the Boxer Rebellion broke out in China. Russian troops mobilized to Manchuria and did

⁸⁵ In 1896, the king and crown prince were smuggled out wearing women's clothing to the Russian legation. The king's escaped signaled an end to the Gabo reforms.

not retreat when the rebellion subsided. Japan and Great Britain, displeased with Russia's actions, signed an Anglo-Japanese Alliance in 1902, which recognized Great Britain's interest in China and Japan's interest in Korea. Japan signed a secret agreement with the United States, known as the Taft-Katsura Agreement of July 1905, acknowledging Japan's goals to control Korea. The Treaty of Portsmouth in September 1905 ended the Russo-Japanese war, where the victorious Japanese expanded their interests into Korea.

In the 20th century, Japan gained sway in Asia with the aid of international treaties. Alexis Dudden described Japan's adoption of international law; the process came via strong Western support especially from the French. Japanese legal scholars created terminologies based on *kanji* terms (Chinese characters used in Japanese). The Japanese rewrote laws in 1868 with compounds of Chinese characters (*jukugo*) and adopted older Chinese terms for Western law (Cassel 2012, 35). They used a different set of alphabets called *katakana* to spell foreign words phonetically (Dudden 2005, 34). Dudden emphasized how the rapidity with which Japanese legal scholars wanted to adopt the international legal system was in part due to Japan's pre-existing expansionist goals. Dudden's argument presumed that the Japanese used international treaties and laws to annex Korea (Dudden 2005, 46). According to Dudden, Japan was "Fully aware that the international arena sanctioned Japan's increasing rule of Korea" (2005, 47).⁸⁶

Japanese imperialism examined economic relationships, which extended beyond racial disparities. The race played a less significant role in the imperial process although discourse against non-Japanese ethnicities existed. As a member of the same race,

⁸⁶ Other scholars of Korea (Yi 1984, Eckert et al. 1990, Dudden 2005) also suggested that Japan's plans to take over Korea go as far back as the Imjin War of 1592 led by Hideyoshi (Lewis 2003).

Koreans considered that the Japanese should have worked with China and Korea to defend their nations against the West. Japan used China's weakened stature as an opportunity to invade neighboring countries (Hahm 2006, 47). The Korean term, "*tongmin tongjong*," meant same culture and race. In Japan, however the government promoted the slogan of "*Do-so Do-shu* (Same Origin, Same Race)" to legitimize directly ruling Korea (Shin 2010, 332). Even as members of the mythological family, the Japanese considered Koreans to be "half-siblings" or "cousins" (Dudden 1998, 249), but it was merely rhetoric used to legitimize Japan's goals.⁸⁷

Racial differentiation was a common practice within Japan. How Japan observed Westerners and other Asians was valorized in popular culture. On July 18, 1907, the *Yorozu Choho*, a Japanese periodical published a cartoon of Ito Hirobumi dressed in a kimono chasing a diminutive and childlike Korean in ragged traditional dress without shoes while tall Western men observed. The cartoon referred to the 1907 Agreement prevented the Korean government from enacting any laws, *horei*, without approval from the Japanese resident-general. Korean, An Chung-gun's assassination of resident-general Ito Hirobumi in 1909 precipitated harsh reaction from the Japanese government. In short, the treaties of 1905 ended much of Korea's sovereignty, but the assassination yielded the Annexation treaty, which made explicit, Japan's reign over Korea.

The Japanese held racist beliefs against Korean ethnics, but the beliefs needed the legitimization of legal contracts for colonial process to hold. The Japanese did not have the luxury as European colonists had over non-White Others in the early years of colonialism, so the need to contractually show Korea's weakness in managing diplomatic

⁸⁷ I want to thank Hilary Holbrow for her insight into Japanese cultural rhetoric.

affairs, fishery rights, telecommunications and so forth extends law as another tool in examining colonial relations.

Protectorate (1905) and Annexation (1910) Treaties

The treaties helped to gloss over racism and economic exploitation and therefore became powerful tool in 20th century colonialism. Several treaties in the early 20th century extended Japan's involvement in Korea. The Protocol of February 23, 1904 stated that Korea placed "full confidence" in Japan "For the purposes of maintaining a permanent and solid friendship between Japan and Korea and establishing peace in the Far East" (art. 1, Chung 1919, 213). Japan's sentiments in unifying Asia as a guardian or colonizer became evident in the wording of the treaty documents as well. Article 4 granted Japan the right to occupy Korea if a third party attacks Korea. Korea and Japan signed the Agreement relating to Financial and Diplomatic Advisers, which had only 3 articles total on August 22, 1904. The treaty appointed a Japanese citizen to manage Korea's financial affairs (art. 1) and prohibited Koreans from signing any treaties or conventions with foreign powers without the consult with the Japanese government (1904 art.3, Ch'oe 2010). The Japanese government curbed Korea's presence in the international community.

A major diminishment of Korea's sovereignty occurred in 1905 when Korea signed multiple treaties with the Japanese that discussed communication services, foreign affairs, and coastal trade in Korea. The treaty mediated Korea's communication with other nations because it transferred the control of telegraph and telephone services in Korea to the Japanese. The Koreans nominally controlled one telephone line in the imperial house. The agreement on November 17, 1905 put the Japanese in charge of foreign affairs in Korea. Foreign powers could no longer contact Korea directly. Korea's

window to the Western world was “through the medium of the Government of Japan” (Protectorate Treaty 1905, art. 2, Ch’oe 2010). Without contact from other nations, Korea was omitted from the family of nations (Howland 2011, 71).

With international treaties, Korea experienced weakened domestic sovereignty rights. The two sides negotiated the Protectorate Treaty, also known as the Ulsa Treaty, on November 17, 1905.⁸⁸ By 1905, Ito Hirobumi, who later became the Governor-General of Korea, addressed Korean cabinet ministers with international legal language to convince Koreans that “Korea is no longer a Chinese tributary state” (Dudden 2005). The “Declaration of the Japanese Government” on November 22, 1905 expressed the Japanese government’s sentiment to control Korea because the “experience of recent year has demonstrated the insufficiency of measures of guidance alone” (Chung 1919, 223). The Japanese “guidance” of the Koreans examined the post-racial permutations of colonialism. The paternalistic manner of the Declaration assumed that the Koreans were in a “dangerous situation” and needed the Japanese to usher them into safety (ibid).

Western Reaction to the Treaties

Treaties bound nations as a form of contract towards each other. Treaties with strong implications such annexation treaties were closely examined. Annexation treaties appropriated colonialism as a legal action. The United States’ annexation of Texas (1844) and Hawaii (1897) occurred not long before Japan’s annexation of Korea (1910). As a maneuver that Western legal scholars developed, the use of annexation treaties was mildly applauded. George Trumbull Ladd claimed that Japan made Korea’s economic improvements possible (Ladd 1918, 436). In 1907, after the protectorate treaty but before the annexation, Korea’s exports revenues were 8 million yen. After the annexation of

⁸⁸ Ulsa is named after the 42nd year of the Korean calendar.

1910, Korea's foreign trade increased threefold and exports grew six-fold according to Ladd. Exports increased, but the net growth was negative in the 1920s because goods were exported and not appropriated to Korean workers.⁸⁹ And only Koreans loyal to the Japanese could find employment (1910, art. 7).

Table 27. Distribution of net commodity product by industrial origin (percent, based on 1936 prices)

	Agriculture and fishery	Mining	Manufacturing
1910-15	95.2	1.3	3.5
1916-21	93.1	1.4	5.5
1922-27	90.2	1.2	8.6
1928-33	87.4	2.0	10.6
1934-39	15.6	5.8	18.3
1940	69.7	8.3	22.0

Source: Suh, 1978, 46. Table 18 from Haggard et al. 1997

Over 40% of total agricultural output in Korea were crops other than rice, however the Japanese refused to invest in crops other than rice (Haggard et al. 1997, 869). It was well known by 1911 Japanese became the main language for instruction in elementary and high schools.

Ladd's final paragraph from his note on "The Development of Korea in Most Recent Time" captured a view that most Western intellectuals shared (1918). It promoted the idea that colonization brought progress to Korea because

"On the whole, and especially since the Koreans themselves seem to be well satisfied with the change of government, we do not see how the mead of praise can be withheld from imperial Japan, for giving to the world notable example of really "benevolent assimilation." (Ladd 1918, 438).

⁸⁹ Japan's economic policy in Korea restructured to improve mining and manufacturing instead of agriculture and fisheries (Haggard et al. 1997).

The form of assimilation that the Japanese proposed was a doctrine based on *doka*. Ladd assumed that Koreans were pleased with the colonial process. Ladd's claim was unfounded because the Korean independence movement that culminated on March 1, 1919 included many members of the 19th century Independence Club that were once pro-Japanese. The Japanese wanted their colonized populations to envision themselves as a part of the Japanese empire but as members with low status. In durable inequality (Tilly 1998) in the context of Asian colonialism (Shin 2010, 331) survived until after World War II.

Japan's efforts to secure economic presence in Korea focused on trade and direct investments. The trade industries incorporated cotton manufacturers and banking, while direct investments referred to railroads and agriculture (Duus 1984, 154). The four industries examined are in cotton, banking, railroads, and agriculture. First, the textile industry wanted to extend trade across Asia. In 1896, Korea imported 29% in cotton tissues and 13% in cotton yarn from Japan. Japanese textile manufacturers coordinated their efforts to flood the Korean markets; the government did not directly aid industry. Textile manufacturers nonetheless gained access after the Treaty of Kanagawa. Second, the Japanese banks handled a large proportion of commerce in Korea. The Dai-Ichi Bank of Japan's profits rose annually 10.9% from 1896 to 1899. From 1906 to 1909, the rate of increase was 37.1% per year in Korea (Duus 1984, 154).

Third, the direct investment of railroads coincided with additional means to standardize weights and measurements, currency, harbors, chipping routes, banks, and warehouses (Duus 1984, 155). The Seoul-Pusan railroad company relied on public stocks and required the support of the government to complete the plan. Fourth, the

direct investment of agriculture was the final key economic structure that signaled Japanese imperialism as a commercial venture. Rice trade with Japan expanded in the 1880s. As Japan developed machine and technology industries, the Japanese relied on rice exports from China, Korea, and Taiwan in the late 19th and early 20th centuries. Total imports on rice were at their peak from 1903 and 1905; however in 1904, out of 12,162 (per 1,000 piculs) only 1% of the imports were from China, 2% were from Korea, and 4% were from Taiwan (Duus 1984, 171). Reliance on China, Taiwan, and Korea were higher in 1896. Of the 1,862 (per 1,000 piculs) in 1896, 21% were from China, 51% were from Korea, and 21% were from Taiwan. In Korea, the Japanese government established policing networks to protect Japanese properties (Chen 1984, 213).

Crime and Punishment in Korea

The transformative power of treaties reformed domestic legal provisions. The Japanese attacked Korea's criminal justice system. In 1905, King Gojong approved the new penal code, *Hyonbop Taejon*, in Korea that made criminal procedures more transparent. Ito Hirobumi lauded Japan's influences in Korean law because it abolished the "system of torture" (Ito in Dudden 1998). A 1907 *Report* indicated how "Koreans had little or no concept of private rights as were understood elsewhere in the Orient" (as quoted in Dudden 1998). The Japanese characterized Korea's penal codes as barbaric. Beatings, imprisonment, and confinement in stocks, the Japanese claimed, were common punishment (1907 Annual Report quoted in Dudden 1998).

As another form of legal defense for colonization, the Japanese portrayed Korea's criminal and justice system to be excessively violent. The Japanese reported that cruelty was built into Korean law and the actions were notably unbecoming for a civilized nation. The *Osaka Mainichi Shinbun* wrote in May 15, 1905, "people are beheaded the

same way that hogs are slaughtered” (Dudden 1998, 228). The Japanese described Korean punishments as barbaric in the *Horitsu Shinbun* in 1905 although Japan had practiced hangings for thirty years (Dudden 2005, 113). Koreans practiced flogging and from 1913 to 1920 about 600,000 people were flogged sometimes resulting in death (Dudden 1998). The Japanese used examples of Koreans using outdated and primitive customs to punish criminals when the Japanese used the same punishment tactics two decades earlier.

The changes that occurred in late 19th century Korea interested the Japanese, Chinese, Western nations such as the United States. The Japanese urged the Korean government to create a separate judicial branch for criminal proceedings. Other legal modifications included granting foreigners the right to purchase land in Korea. China’s final efforts to control Korea in the 1880s came with the usage of more international legal agreements. The Chinese wanted Korea to sign treaties with Western nations such as the United States to curb Japan’s encroaching interests. The 1882 treaty between Korea and the United States encouraged the Koreans further to modify their criminal law codes. The resident-general wanted to assert that the treaty with the Americans further strengthened Japan’s stance to make Korea, “assimilate to us” (Ito in Dudden 1998, 244). Essentially, after China’s defeat in the Sino-Japanese War, the Chinese had to recognize Korea’s autonomy (*zìzhǔ*, 自主) and independence (*dúlì*, 獨立) in the first article of the Treaty of Shimonoseki (1895). The grass roots uprising against the Japanese on March 1, 1919 challenged the impression that the Japanese had presented to Western nations.

Discussion - Aid from the West?

Western perception of the conflict in Asia was key for Korea’s efforts to regain sovereignty. The geo-political context affected the struggle for independence in Korea.

Dissent from American missionaries such as Arthur Judson Brown reported to the West on the large number of arrests of Korean Christians in 1912 (Dudden 1998, 261). In 1920, Canadian journalist Frederick Mckenzie's book, *Korea's Fight for Freedom*, examined how the 1910 annexation may have brought material progress to Korea but the bureaucracy in Korea had failed as much as the Russians failed in Finland. The poor administration in Korea was due to Japan's insensitivity to Korea's national ideals. The Japanese resident-general Terauchi planned to remove extraterritoriality rights in Korea, which meant that Korean citizens were no longer able to protect their citizens in crimes involving foreigners. Squashing Korea's the national language and sumptuary customs furthered public disapproval of the Japanese administration (Dudden 2005, 78).⁹⁰

Many pro-Independence Koreans who wanted to end Japanese rule, did not return to indigenous traditions for inspiration as the Tonghak movement in the late 19th century had. Instead, the activists of the 20th century moved towards the auspices of the Christian missionaries. The Japanese investigated key Korean political conspirators that were also Christians and often investigated churches (Kane and Park 2009). The Japanese grew suspicious of the Christian church and the churches' efforts to convert Japanese citizens; the government stamped Christianity out of Japan centuries earlier (Fukase-Indergaard and Indergaard 2008). The Korean government in the 19th century persecuted Korean Christians, but the tide turned in the early 20th century the Japanese persecuted the Koreans. Also signing treaties with Western nations in the late 19th century allowed more missionaries to enter and interact with Koreans directly (Kane and Park 2009). The ability to engage with members of different cultures in everyday life developed a new

⁹⁰ For Korean men, cutting off the top-knot was the ultimate insult. The top-knot was fashioned when their long hair was tied up and pulled up to the top.

understanding of one another (Eliasoph and Lichterman 2003). Western origins of Christianity gave the churches greater autonomy compared to other institutions in Korea.

Attempts to get help from America remained nonetheless. In 1905, Yi Seung-Man wrote a letter to President Theodore Roosevelt to depict the conditions in Korea. Yi and other Korean men who were educated in the United States went to the League of Nations to plead the case for Korean independence. The help of Western missionaries had limited reach. The loss of Korean sovereignty came with the loss of Korean cultural identity. Schools in Korea instructed in Japanese. American missionaries' schools were initially exempt from instructing in Japanese. The missionaries also had to abide by the new standards. By 1939, Koreans had to adopt Japanese names. It was not until after Japan's defeat in World War II that Korea regained its independence and overturned Japan's status as a rising power.

Table 28. Involvement in Korea

	Korea	China	Japan	United States
1876			Treaty of Ganghwa	
1882	Imo Soldier's Uprising	Regulations for Maritime and Overland Trade between Chinese and Korean subjects	Treaty of Chemulpo	Treaty of Amity and Commerce
1883		24 rules for the traffic on the Frontier between Liao-tung and Korea	Stipulations for the Treaty Limits in Korea	
1884	Kapshin "progressive" Coup		Agreement Respecting the Foreign Settlement at Chemulpo	
1894	Gabo social Reforms			
1897	Empire of Korea formed 대한제국 (大韓帝國)			
1899		Commercial Treaty		
1904			Taft-Katsura Agreement	Taft-Katsura Agreement
1905			Protectorate Treaty	
1909			Memo of justice and prisons in Korea; Bank of Korea; reconstruction of Antung-Mukden railway	
1910			Annexation Treaty	

When interpreting this table see that the treaties involved the top column country with Korea unless otherwise noted. The items under the Korean column were significant events, which happened in Korea domestically.

Conclusion

From Japan's economic actions, the Koreans combated treaties that granted Japan access to labor and natural resources in Korea. The strength of the Japanese military weakened Korea's ties to China. Korea's colonial experience highlighted how legal measures affected regional politics. Japan's economic stronghold in Asia resulted from a series of treaties that granted them entry in China, Korea, and Taiwan. The Japanese used natural resources and labor power from these regions to develop industries in Japan. As with the collapse of the Qing Empire in China, the Yi dynasty in Korea dissolved due to their inability to adapt to the economic goals of a modern nation-state. Trade was paramount, as were the development of technology and the removal of superstitious past ways.

The treaties of the 19th century filled volumes. The lasting impact of the treaties included introducing Korea to Christian missionaries. Though some missionaries such as Arthur Brown sided with Japanese colonialism and believed that the Japanese imperial plans would help Korea rid its pagan past, many Christian workers helped to protect Korean civilians (W. Kang 2005, 97). The success of Christianity was linked to ordaining Korean priests and ministers that could proselytize in the native tongue. By building schools and developing curricula for doctors, missionaries indirectly supported domestic education in Korea. Directly, religious leaders spoke out against Japanese colonialism and created safe havens for political dissidents to meet.

The Korean independence movement in 1919 failed and independence was not granted until after Japan's defeat in World War II. Despite its relative brevity compared to other colonial regimes, Japanese colonialism in the early 20th century established post-racial understanding of colonialism. Economic calculations furthered certain relationships

while abandoning others. By overlooking key socio-political customs of Asia, international law in the late 19th and early 20th centuries made strides to facilitate trade. The reproduction of the idea for trade reappeared without much variation in multiple treaties involving different signers in the 19th century.

CHAPTER 6

BILATERAL TREATIES IN A CONTEMPORARY CONTEXT

Throughout the dissertation, I assessed general trends and specific ramifications of how international treaties shaped domestic polities. The project used treaties of the 19th century because it is enriching to recall the effects of these partnerships and conflicts. I thread this work towards other ends such as immigration policies, regional economic organizations, and other international treaty plans such as human rights and environmental climate change protocols. The five major conclusions of the thesis discusses how 1) regional differences among partners affected the outcome of the treaties, 2) by the end of the 19th century, the effect of regional differences lessened over time, 3) China's poor experience with Western legal systems established a trajectory for the Chinese that led to nearly a century of domestic and civil disputes, 4) Japan used the Western style treaties to expand national prestige and establish imperial rule, and 5) like China, Korea initially floundered under the Western legal system.

First, I generally found that cultural differences affected the types of treaty exchanges during the 19th century. The treaties were distributed widely among nation-states of varied geographic regions. The geography is not the determinant of the differences. However, geography becomes a useful category that aligns similarities in cultural and legal traditions. I noted that treaties between European and Asian countries were less reciprocal than treaties among European states along economic and diplomatic provisions. The content of the treaties focused on economic goals. Treaties among Asian states were not mutually beneficial in the 19th century. The intra-Asian treaties that were written using the Western style deepened the crevices among Asian states that were

departing from one form of imperialism, the Chinese tributary state, to the Western imperial mode for economic extraction that Japan heralded.

Second, over time, the asymmetries in treaties dissipated. The general pattern towards symmetry, Mahoney (2010) speculated, powerful actors manipulating other actors in large-scale institutions. The struggle to accept the new legal system proved problematic in several ways. First, the concept of exchange among equally ranked partners was a new challenge. Second, the economic impetus of free trade opened Asian states to Western foreigners also caused alarm. However, the expansive use of reciprocal language coincided with widespread circulation of similarly worded documents and treaties.

Third, China's political orders in the 19th century changed as a reaction to international treaties. In *Provincializing Europe* (2000), Chakrabarty warned scholars against using proscribed frames for comparison that saw Europeans as "advanced" while other regions were not. The common historical narratives privileged Western economic and legal traditions. Cultural gaps between Asian and Western policy makers in the 19th century informed in part challenges found today. The dissertation's findings are applicable to the culturally entangled legal climate of the 21st century. Primarily, the research examines segues to global trading patterns. Effective policy on trading initiatives should keep in mind the cultural sensitivities that challenged past interactions.

Fourth, Japan's rise to prominence as an international power in the early 20th century is partially attributed to Japan's maneuver of Western style treaties. Japan's successes were not based on Japan imitating the West. The Japanese elites used the period of Western intrusion to revamp status hierarchies. The efforts to favor wealthy

merchants coincided with expanded commerce with Western partners. The Ansei treaties of 1858 allowed dissenters of the preexisting order to blame Western intrusions as a symptom for the shogun's ineffective rule. The turn towards "modernity" occurred not without internal resistance. The opportunity to add Western social standards into the Charter Oath signaled a departure from past practices. A variant of economic extraction and the expansion of national prestige also took place.

Fifth, Korea suffered during the 19th century. Treaties alone may not explain the complexities of domestic turbulence in Korea, but Japan's intrusion into Korea with the Ganghwa Treaty signaled a need to focus on foreign relations. The policy of isolationism was ineffective for Asian states. New international relations emphasized the importance of trade. The reluctance to trade widely with Western and Asian partners threatened Korea's ability to sustain self-governance. Therefore, Japan's extraction of Korean, Taiwanese, and Chinese labor and resources did not merit admonishments from the Western communities' family of nations. Instead, Japan's impetus to further trade in the region received praise from Western commentators.

The treaties patterned a shift towards symmetries because the dominant structures pushed a mixture of neoliberal economics, realist power stages, and institutional ideology of appropriate legal actions to change global practices towards forms most recognizable to Western observers. The language for trade and compliance grew towards standards that members of the international community recognized as valid. Issues such as human rights, child labor laws, and minimum wages are appropriated norms that scholars and the public could agree upon. Similar processes are in place to institutionalize convergences on these issues.

Bilateral treaties in the modern context

In this section, I will lay out the implications of regionalism in contemporary trade relations. Regionalism is not connected to negative biases of imperialism. Trade and bilateral agreements are prominent in the IR literature. Pollins's 1989 and Rose's 2007 studies on trade following the flag focused largely on modern nation-states and their emphasis on economic gains. Pollins (1989, 747) discussed how distance affected bilateral trade agreements. Proximity was an aid. Bilateral investment treaties (BITs) diffused globally and the documents followed formulated scripts with similar wording and content (Neumayer and Plümper 2010). In effect, exponential growth in the number of treaties signified increasing disparities between capital-importing countries that were more likely to sign BITs with capital-exporting countries if other capital-importing countries signed treaties with the exporting state (Neumayer and Plümper 2010). As recognized polities had gained more treaty partners in the 19th century, contemporary treaties also contracted with recognized trading partners. Specific trade initiatives diffused as a policy before their efficacy could be tested.

Global trading markets evaluated long-term and short-term growth. Scholars (Clark and Beckfield 2009, Zhou and Park 2012) examined on global markets post-World War II in search of regional effects. Beckfield (2008, 2010) focused on regionalism based on the formation of intergovernmental organizations. Zhou and Park discussed theories on structural equivalence as salient ideal types applicable in current trade relations. Network analysis captured the dynamism of legal institutional changes. In addition to bilateral trade agreements, sociological studies on human rights treaties also examined the interplays of law, culture, and the nation-state.

As a core sociological concept, homophily used in network analysis, related to global economic development as well. As economic interest dictated treaties of Latin America, Africa, and Asia, trade encouraged the mediation of cultural differences. Homophily's social networks origin was for interpersonal relations (McPherson et al. 2001). The extrapolation of the term in international relations examined countries as singular homogenous entities. As complex entities such as nation-states are generalized for theoretical simplicity, the test for homophily yielded purposeful reductions of abstracted concepts such as culture.

In a novel study examining homophily in global trade, Min Zhou (2011) tested for homophilous patterns from 1950 to 2000. He tested three hypotheses on geographic, political, and cultural homophily. First, geographic homophily was defined by distances between countries being within 3000km from another country (Hummel et al. 2007). Second, political homophily aligned countries with similar political institutions as gauged with democratic versus autocratic spheres to facilitate trade. He posited that similar political institutes would set fewer legal restrictions and allow trade to flourish. Third, cultural homophily relied on common languages, colonial history, and civilizational categories as Huntington (1996) had described. Zhou (2011) found statistical evidence to support all three forms of homophily aiding global trade.

Though Huntington theorized the civilization groups post-hoc after wars, imperial regimes, and economic agreements, the sentiment to proscribe a "beyond geography" causal analysis of economic success especially in Asia carried certain "national essences." In addition, Zhou's fine grained examination of geographic and cultural homophilies for the intermediate input and final manufacture sectors in bilateral trade

demonstrated geographic propinquity and cultural homophily's aid in intermediate input and final manufactures but not in the raw materials sectors. The intensification of geo-cultural homophily contemporaneously brought past colonial histories in direct relation to modern economic trends.

Zhou and Park (2012), a companion study to Zhou (2011), examined structural equivalences and network structures in global trade. Structural equivalence assessed a country's similarities and differences based on its trading partners in relation to another country's trading partners (Snyder and Kick 1979). Three assumptions of structural equivalence included 1) bilateral trade imbued cultural meaning, 2) common business networks reduced transaction costs and facilitated direct bilateral trade, and 3) similar institutions reduced risk and allowed smoother cross-national transactions. The cohesive mechanisms of structural equivalence paired in line as three factors of 1) common social values and tastes, 2) information flows, and 3) similar institutions which led to increased bilateral trade (Zhou and Park 2012, 507). Zhou and Park (2012) found support for structurally equivalent countries having better trade relations that continued to grow over time.

Examining global economies in terms of homophily and structural equivalences harken back ideologies of similarities aiding development. Assimilative theories for colonialism sanctioned dominant cultures overruling local practices. Particularly in Asia, Japan's assimilative imperial policies harbored an extreme type of homophily. Homophily resembled Japan's aims towards Pan-Asianism in the early 20th century. For a century or longer, colonial powers ruled African and Latin American states while shaping the linguistic and religious patterns in the region. Despite the shorter durations

of colonialism, the structural equivalence score between Japan and Korea was .991 out of 1 in 2000. The industrial infrastructure that the Japanese left in Korea, Taiwan, and China affected economic development in East Asia (Shin and Robinson 2001).

After opening Asian ports to foreign nations, the laws on the books allowed certain changes to take place in Asia. The transmission of new skills and technology evolved throughout the 19th century. Even though new curricula were in place, educational opportunities were most available to those that were elites in the old regime. Treaties promoted Western law. Newly trained lawyers sustained these ideas for law. Euro-centric bases of the legal profession spread as a process of elite reproduction (Dezalay and Garth 2010, S. Liu 2013). Asian scholars avoided the syncretism of values. In Asia, the introduction of a distinct legal practice accumulated into a logic for economic, social, and political organization.

With bilateral treaties, the evolvment from loosely constructed asymmetric agreements towards symmetric legal partnerships (at least in the language of the treaties) emerged over time. As Mahoney had noted, the convergence towards stability arrived when the dominant party disproportionately distributed resources to already powerful actors (Mahoney 2010, 16). Unbalanced accumulation of wealth and resources reified themselves in global governance, especially for trade. With law as a constant force, embracing its informal registers also accounted for the amount of discrepancies that were written into the early treatises of international law (Gong 1984). As a practice, law became difficult to enforce as interpretation and governance evolved based on internal and external pressures.

The cohesion of regions, especially after the advent of the European Union (EU), beckons how despite reciprocal language, coalitions based on geography help to achieve balance of power in the international system. The EU's stance on immigration, citizenship, and national identity are integral to the economic debates. Treaties created the EU. Similarly, treaties expanded global partnerships in trade and assimilated beliefs based on accepted standards for concepts such as human rights agreements. The convergences towards agreeable standards for human rights, justice, and environmental responsibilities may require multiple wide-reaching treaties, but the medium for discourse among nation-states became available through treaties.

APPENDIX

TREATY CODEBOOK 2013

1) Country Code	Country Name
JPN	Japan
KOR	Korea
USA	United States
GBR	Great Britain
ARG	Argentine Confederation
AUH	Austria-Hungary
BOL	Bolivia
Bulgaria	Bulgaria
BRA	Brazil
CHN	China
CHL	Chile
COL	Colombia
COS	Costa Rica
CUB	Cuba
DMK	Denmark
ECU	Ecuador
ElSalvador	El Salvador
FRA	France
HES	Hesse
ITA	Italy
MEX	Mexico
MON	Monaco
NED	Netherlands
Nicaragua	Nicaragua
PER	Peru
PAN	Panama
PAR	Paraguay
POR	Portugal
Romania	Romania
RUS	Russia
Siam	Siam (Thailand)
SPA	Spain
SWE NOR	Sweden-Norway
SWI	Switzerland
TRI	Tripoli (Barbary States)
URU	Uruguay
VIE	Vietnam (Kingdom of Annam)

VARIABLE	Descriptive Label
2) Name	Treaty Name

3) Year	Year of the Treaty
4) CCODE1	Signer Country number 1
5) CCODE2	Signer Country number 2

VARIABLE	Descriptive Label
6) Region	Name of regional pairing
<1> GPAS	Great Powers and Asian States
<2> EUR	Intra Great Powers including the United States
<3> ASIA	Intra Asian States
<4> GPPC	Great Powers and the Postcolonial Latin American States
<5> LAT	Intra Postcolonial Latin American States
<6> PCA	Postcolonial Latin American States and Asian States
<7> OTH	Other treaties of interest

7) DipPriv	Diplomatic Privileges, including for commercial agents
<1>	Diplomatic privileges are reciprocal, i.e. diplomatic agents of ccode1 in ccode2 are like the diplomats of ccode2 in ccode1 AND diplomatic privileges are extended to nations friendly to contracting parties
<2>	Diplomatic agents will have full jurisdiction over their country's vessels and offices in the other country's property

8) ConRep	Establishing Consular Representation, including commercial agents
<1>	Country code 1 (ccode1) will have consul in Country code 2 (ccode2)
<2>	Ccode2 will have consul in ccode1
<3>	Countries from both ccode1 and ccode2 will have representatives in the other's country
<4>	Both sides will appoint consul for a specific diplomatic duty

9) Relief	Disaster, distress relief, shipwreck, rescue and other emergencies
<1>	Ccode1 may access ports of ccode2 during emergencies
<2>	Ccode2 may access ports of ccode1 during emergencies
<3>	Both countries will help the other during emergencies

10) Clandtra	Clandestine Trade
<1>	One country will seize the goods of the other if the other is trading clandestinely
<2>	Both countries seize goods of the other if trade was unauthorized; also noted if it was an attempt to suppress trade of certain goods

11) Protprop	Protection of Physical and Material Properties
<1>	Local authorities of either country (but not both) will protect citizens from the other country residing in it from arson, mobs, attacks, etc: A) citizens of ccode1 residing in ccode2 will have the protection of ccode2 officials in case of attacks OR B) Citizens of ccode2 residing in ccode1 will have the protection of ccode1 officials in case of attacks

<2>	Local authorities from both countries agree to protect the property of foreigners who entered their country
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12) ETJ	Extraterritorial Jurisdiction
<1>	In criminal or commercial disputes, when persons must be tried for criminal activities, the citizens of either country (but not both) residing in other's country will be tried by consul according to the laws of the country where the crime was committed: A) citizens of ccode1 residing in ccode2 will be tried by consul of ccode1 for crimes against ccode2 OR B) citizens of ccode2 residing in ccode1 will be tried by consul of ccode2 for crimes against ccode1
<2>	Citizens of either country residing in the other's domain will be tried according to the laws of the alleged persons' citizenship
<3>	Both sides will renounce the costs incurred in the arrest and maintenance of the person to be surrendered

13) Reside	Foreign Residence
<1>	Citizens of either country (but not both) should be permitted to reside, rent, purchase land, and build warehouses in other country
<2>	Citizens of both countries should be permitted to reside, rent, purchase land, and build warehouses in the other country

14) Locauth	Local Authority
<1>	Citizens of either country (but not both) in other country will be under the local authority of foreign country for
<2>	Citizens of both residing in the other's country will be under the other's local authority; also citizens of ccode1 in ccode2 and citizens of ccode2 in ccode1 will address grievances with local authorities
<3>	Local authorities will assist extradition proceedings and the return of deserters

15) Opium	Restrictions on the Opium trade
<1>	Neither country will sell opium to the other
<2>	Both parties agree to not sell opium to a third party
<3>	Ccode1 may sell opium to ccode2 after paying a tariff

16) Terminate	Right to Terminate the current treaty
<1>	Yes, either party can terminate the treaty
<2>	No, neither party may terminate the treaty

17) Nextmeet	Arranging a next meeting for the two parties
<60>	The terms of the treaty are good for 5 years
<120>	The terms of the treaty are good for 10 years

18) MFN	Most-favored Nation Status
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<1>	One of the countries is granted MFN status
<2>	Both countries are granted MFN status

19) Relig	Religious freedoms, namely Christianity mentioned in the treaties
<1>	A) Treaty mentions both parties adherence to Christianity OR B) both parties allow for freedom religion to the citizens of the other where religions are not solely Christianity
<2>	Citizens of either (but not both) countries are allowed to practice their religion in the other's country

20) Studyabr	Promote intellectual exchanges especially in learning languages
<1>	Citizens of either (but not both) countries are allowed to travel abroad to study the other's language, culture, and technologies
<2>	Citizens of both are allowed to study in the other's country
<3>	Treaty mentions the use of translators, interpreters, or teachers but not training people abroad

21) Lang	The official languages used in the treaty
<1>	English in combination with Chinese
<2>	English in combination with Spanish
<3>	English in combination with Other language
<4>	Languages, including combinations, not including English or French
<5>	French

22) sovergn	The recognition of sovereignty
<1>	One country (but not both) recognize the sovereignty of the other
<2>	Both countries recognize the sovereignty of the other
<3>	One country (but not both) promise to relinquish rule over a third location or another location

23) Port	Establish treaty ports. The treaty specifies whether one or both countries would open up the ports
<1>	Specific treaty ports were named and were not reciprocal
<2>	Both countries would open up their respective ports for trading purposes
<3>	Less than 16 ports were open and may include ports of a third location

24) Portname	Names of the Ports open to the Other country
	The name of the treaty port is typed in

25) Fugitive	Harboring fugitives
<1>	Citizens of one country (but not both) agree to relinquish known fugitives wanted by the other in violation with local laws
<2>	Both countries agree to send back fugitives to their native countries if found

26) Armsale	Sale of firearms or weapons
<1>	Both countries agree to prohibit the trade of goods deemed "contraband of

	war”
<2>	A) Written permission of the importing country is needed for sale of arms OR B) Written permission from the exporting country is needed for trade

27) Article	The number of articles in the treaty total
	Raw number of treaties including supplements or rules attached to the article unless the supplement is signed at a different sitting

28) Type	The type of treaty
<1>	Peace including armistice treaties
<2>	Commerce and navigation
<3>	Friendship including Commerce and Amity, Friendship and General Intercourse
<4>	Extradition
<5>	Arbitrage
<6>	Delimitation, protectorate, annexation, and order treaties specific to territory gain or loss
<7>	Other treaties including Consular conventions, arbitration, diplomatic representations, public health, pilotage

29) Histleg	Historical legacy
<1>	The two countries mentioned attempt to correct past disagreements
<2>	The two countries reminded each other of longstanding history (neutral, positive or negative) with one another

30) prevcon	Previous legal arrangements prior to the treaty on hand
<1>	Laws from prior treaties are still valid
<2>	Laws from previous contracts are being updated or amended

31) secure	Securing commerce is a goal in the treaty
<1>	Both countries wish to secure commerce with one another
<2>	Both countries wish to secure commerce at a third location

32) ratif	Ratification time for the treaty in months
<0.1>	if it is to be done as soon as possible without any time specification
<6>	6 months
<12>	12 months
	Any other duration are coded by months

33) decade	Binned decades of when the treaty was signed
<1>	1783-1800
<2>	1801-1820
<3>	1821-1840
<4>	1841-1860
<5>	1861-1880

<6>	1881-1900
<7>	1901-1912

34) post-1885	Era when the treaty was signed, whether it was before or after 1885
<1>	1783-1884
<2>	1885-1912

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